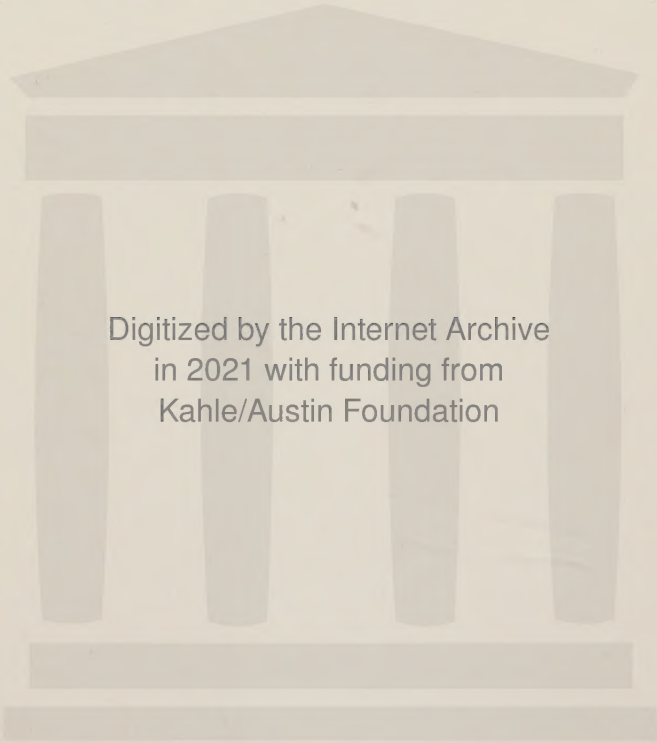

THE CONSTITUTION AT THE CROSS ROADS

EDWARD A. HARRIMAN

THE CONSTITUTION AT THE CROSS ROADS

A STUDY OF THE LEGAL ASPECTS OF THE LEAGUE OF NATIONS, THE PERMANENT ORGANIZATION OF LABOR AND THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

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PREFACE

In forming the Constitution of the United States, the thirteen original States abandoned their right to settle disputes among themselves by war, and created a Supreme Court with jurisdiction over all controversies between States of the Union. It is the belief of many that nations in general should abandon their right to make war upon each other, and should submit their controversies to judicial settlement. In consequence, or partly in consequence of this belief, the Treaty of Versailles created two new political organizations, the League of Nations, and the Permanent Organization of Labour, with the same membership. Subsequently the Permanent Court of International Justice was created as the judicial body of these two organizations. Of both of these organizations the United States has been invited to become a member. How far the constitutions of the American States were affected by their joining in the Federal Union, is a question which has been discussed for more than a century, and for four years of that period the discussion assumed the form of deadly warfare. How far the Constitution of the United States may be affected by the assumption of membership in the League of Nations and the Permanent Organization of Labour, or even by what is called "joining" the Permanent Court of International Justice, is one of the vital questions of the day. The Constitution is at the cross roads. In one direction leads the way of national tradition and absolute independence; in the other, the way of surrender of absolute independence of action in some degree, to a federation of the world. The questions before the American people are, therefore, two: First, what are the legal consequences of membership in these new organizations; and, second, are those consequences desirable for the people of the United States? These two questions are entirely distinct, but the second question cannot be answered before the first. This book does not attempt to answer the second question. It

does attempt to give a more thorough and more impartial answer to the first question than has yet been given. The first question is a question not primarily, as is commonly supposed, of international law, but rather of constitutional law. While the relations involved are international, the legal questions involved in the interpretation of Parts I and XIII of the Treaty of Versailles relating to the League of Nations and the Organization of Labour, and of the Statute of the Permanent Court of International Justice, are constitutional in their character. These documents must be interpreted in a broad constitutional sense, as is the Constitution of the United States. The term "constitution" is not used in the Treaty of Versailles, and yet both the League of Nations and the Permanent Organization of Labour have definite constitutions, providing for, though not in themselves creating, the Permanent Court of International Justice for the settlement of international controversies. It is true that the Members of the League of Nations have not surrendered to the League all the powers which the States surrendered to the United States, and it is by no means clear to what extent the Great Powers intend *practically* to surrender any of their powers to the League of Nations. The Constitution of the League bears but slight resemblance to the Constitution of the United States, but as a constitution it requires legal analysis and interpretation. As a matter of fact, much of the discussion in regard to the League of Nations has been purely political in character. Even the Assembly of the League itself has attempted to put an interpretation upon Article 10 which is obviously political, and not judicial, in its character, being intended to save the necessity of an amendment to that article.

If the American people fully understand the legal consequences of any proposed action, it must be assumed that they are fully capable of deciding as to the practical advantages of such action. Their Constitution is now at the cross roads between nationalism and internationalism. The object of this book is not to direct people which road the United States should take, but to make clear the legal topography of the new road opened by the Treaty of Versailles.

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THE CONSTITUTION AT THE CROSS ROADS

CHAPTER I

WHAT KIND OF ORGANIZATION DID THE PARTIES TO THE TREATY OF VERSAILLES CREATE?

THE preamble to the United States Constitution says that "the people of The United States . . . do ordain and establish this Constitution for the United States of America." By this Constitution the people of the United States did three things: First, they created a super-state to which, by the ratification of the Constitution, the individual States surrendered a portion of their sovereignty; second, by the Constitution a government for the new nation was created; third, the rights of individuals against the Government were protected in certain instances, a protection widely extended by the first nine amendments to the Constitution, and subsequently by the thirteenth, fourteenth, fifteenth and nineteenth amendments.

It is interesting to note the difference in the preamble to the Covenant of the League of Nations, wherein "the high contracting parties . . . . . agree to this Covenant of the League of Nations." They do not ordain and establish a Constitution; they do not even say that they hereby organize a League of Nations. From a legal standpoint, the language used is extraordinary. A covenant of A is an agreement of A. A covenants with B that he will convey Blackacre to B on payment of $100. In the same document B may make a covenant to pay A $100 for Blackacre, in which case we have mutual covenants. What is meant by the "Covenant of the

League of Nations?" A covenant *of* the League would naturally imply an agreement of the League with someone. This is not the meaning of the words, however, for the League does not sign the Covenant, and, in fact, is not in existence until the Covenant is signed by the high contracting parties. The apparent meaning of the words is that the high contracting parties hereby mutually covenant with each other to organize a political society by the name of The League of Nations, and by the signing of this agreement do hereby create such League. Why was not the intention of the parties expressed in a clearer legal manner? One can only guess the reason. Two conflicting influences were at work at the Paris Conference. One party favored the establishment of a Federation of the World for the purpose of preventing war. The other party was opposed to such a Federation because it would involve the surrender of independent national sovereignty, but was willing to enter into some agreement for the preservation of peace. As a result of the conflict between these two parties, language was used which would permit the claim by the first party that a super-state had been created, and at the same time permit the second party to argue that there was no such super-state but merely a treaty or covenant between the different powers signing the Covenant. Undoubtedly some people at the Paris Conference were aware that the President of the United States could not bind his country by a treaty without the advice and consent of the Senate, and some people were doubtless aware of the fact that the treaty-making power under our Constitution did not extend to any surrender of national sovereignty. Inasmuch as different persons sought to accomplish by this Covenant results necessarily inconsistent with each other, it was inevitable that endless discussion should ensue as to the meaning of the Covenant. Now, it is a fundamental proposition in law that what you actually do is more important that what you intend to accomplish by doing it. If A and B make a contract in writing, the legal question is not what A meant, nor what B meant, but what the contract means, in the absence of certain equitable considerations, such as mistake and fraud. So with reference to

the Covenant of the League of Nations, the question is not what anyone intended to accomplish by signing the Covenant, but what is the necessary legal effect of the Covenant which was signed?

It is obvious that the high contracting parties, in spite of the peculiar manner in which they expressed themselves in the preamble to the Covenant, have *created a new political society* called, The League of Nations. Now, you cannot create any society without members; and when a man becomes a member of a society, he becomes subject, to some extent, to the control of that society as a body. In an ordinary club, a member must obey the by-laws and the house rules. The society, or the club, by reason of its very existence, has a right to enact rules governing the conduct of its members as members of the club, and only as members of the club. A social club has the right to enact a rule that members shall not smoke in the dining-room. It has no right to enact a rule that its members shall vote for a particular political party. The extent to which the members may be controlled by any organization depends, of course, upon its constitution. There can be no society without some object, and if there is no other constitution, the object of the society will limit its powers over its members. This rule is universal, and is inherent in the very nature of every organization. The League of Nations offers no exception to this rule, and it necessarily follows that the League has some power of control over its members, the extent of which is determined by the Covenant. The League of Nations is created by the Covenant, as any other society is created, by the agreement of its members; but any society, when once created, has necessarily an existence distinct from the individual existence of its members. The recognition by the law of a society as a non-human person is a matter of the evolution of jurisprudence. The development of English law in this respect is clearly set forth in Pollock and Maitland's History of English Law, Volume I, page 469:

> "Every system of law that has attained a certain stage in its development seems compelled by the ever-increas-

ing complexity of human affairs to add to the number of persons provided for it by the natural world, to create persons who are not men. Or rather, to speak with less generality and more historical accuracy, a time came when every system of law in western Europe adopted and turned to its own use an idea of non-human persons, ideal subjects of rights and duties, which was gradually discovered in the Roman law-books. From the nature of the case it is not often that jurisprudence can make a discovery comparable to the discoveries made by other sciences or other arts, for it has to await rather than to forestall the slow changes of common opinion. But here there is something that we may fairly call a discovery, though it was made by no one man and by no one age:—'in order that the relationships between men may be adequately and succinctly stated, we must in thought institute a new order of persons, persons who are not men.' We have become so familiar with this artifice of science that we have ceased to wonder at it:—when we are told by statute that the word 'person' is normally to include 'body politic'; that seems a very natural rule. The idea of a 'corporation aggregate', a 'body politic', has obviously been a powerful instrument in the hands of modern law."

"Very surprising it would have been had the English lawyers of Bracton's day obtained a firm hold of the notion of a universitas, a person which has a legal being distinct from that of the sum of its members. In that case they would have been ahead of their Italian contemporaries, who had Code and Digest to set them thinking. It would be a great mistake to suppose that what we are wont to consider the true theory of universitates lay so plainly written on the face of the Roman law-books that no one could read them attentively without grasping it."

Even to-day our municipal law does not recognize to the full extent the legal personality of all societies, and the question whether a partnership or an unincorporated society is

a legal entity which can sue and be sued, is a matter in regard to which local statutes and decisions vary greatly. The legal principle, nevertheless, is clear, however slow any particular legislature or court may be in recognizing it. In the language of Pollock and Maitland above quoted:

> "In order that the relationships between men may be adequately and succinctly stated, we must in thought institute a new order of persons who are not men."

This philosophical necessity is independent of any local rule.

We are compelled, therefore, to recognize the fact that the League of Nations is a political society; that it is a legal person; that as such society, it possesses some control over its members; that as those members are independent sovereign nations, in creating a League, they have necessarily, and regardless of their intention or desire, created a super-state—that is, a new nation with certain powers of sovereignty, however limited, superior to those of the sovereign nations composing the League. Much argument has been spent to show that the League of Nations is not a super-state because its control over its members is so limited and so weak, but all such argument is not to the point. There is no escape whatever from the conclusion that the League of Nations, because it is a real society of nations,[1] has some control over its members, for no society can exist without some such power of control. Such power of control over its members is inherent in its very nature in every society, but the extent thereof is dependent upon the objects and constitution of the particular society in question. This conclusion necessarily raises the question whether the treaty-making power of the President and Senate of the United States extends to the making of a treaty by which the United States as a nation becomes a member of another political society. That is a most interesting question of American constitutional law, but in the present temper of the United States Senate the question is not likely to come before the Supreme Court.

[1] The common misuse of the term "the society of nations," to refer to the civilized nations of the world is pointed out in Va. Law Rev., X, 513.

"That considerable reason exists for the belief that the League was originally intended to be the organ of the will of a narrow group of military states is indicated by authorities of another character than Lord Cecil, though equally committed to the league prospect. In support of this conception of the League as the centralised articulation of an overshadowing political world-will, Oppenheim attributes to the League all the prerogatives of a superstate, when he says:

> 'In its essence the League is nothing else than the organised Family of Nations. Not being a State, and neither owning territory nor ruling over citizens, the League does not possess sovereignty in the sense of State sovereignty. However, being an International Person, *sui generis*, the League is the subject of many rights, which, as a rule, can only be exercised by sovereign States. For instance, the League possesses the so-called right of legation; is able to exercise sovereign rights over such territories as are not under the sovereignty of any State (Saar Basin); is able to intervene in the internal as well as the external affairs of a State; . . . is able to declare war and make peace.'

"This opinion answers to all the conditions of a superstate, for the league is here credited with powers above and beyond those of any state as at present known." [2]

"The League of Nations is neither a State or Department of State, nor a chartered corporation, nor a charitable society, nor a club. Yet it has features in common with all of these, and one which is common to all associations organised for any business whatever in the civilised world. Its constitution is embodied and its undertakings have been and will be further defined in written documents. These, like all documents expressed in human language (for it does not seem that even the simplest can

[2] Rankin on *The Dominion of Sea and Air*, pp. 227, 228.

properly be excepted) are in need of interpretation, and the interpreter's part may or may not be an easy one. Easier or harder as it may be, that part has been regarded in all ages as eminently belonging to lawyers. . . .

"When I talk about public opinion, do not suppose for a moment that I look upon the League of Nations as a body that is going to be without visible force; quite the contrary; if I did not think that the League of Nations is going to be a magistrate who beareth not the sword in vain I would not have given one hour, as in fact I have given a good many hours, to the consideration of its provisions and of the way in which they may work." [3]

In Part I of the Treaty the parties "agree to this Covenant of the League of Nations," but do not say that they *establish the League* as an organization for the promotion of the objects set forth in the preamble. In Part XIII, the parties are more definite in their language. Article 387 recites that "A permanent organization *is hereby established* for the promotion of the objects set forth in the preamble." Part I and Part XIII constitute two super-states, each rudimentary in its organization, each utilizing to some extent the organs of the other organization, having in the first instance, at least, the same membership, and working together for the promotion of universal peace, which Part XIII says can be established only if it is "based upon social justice." The League of Nations could exist without the Permanent Organization of Labour, and the Permanent Organization of Labour might exist without the League of Nations, although it would be badly crippled. The relations between the two are so close, and the identity of membership so important, that it is only by considering the two organizations together that we can get a clear idea of the international situation produced by the establishment of these two organizations. Most of the discussion has been with reference to the League of Nations, and too little attention has been paid to the importance of the Permanent Organization of Labour.

[3] Sir Frederick Pollock at 29th Conference of The International Law Association, 1920. (Rep. pp. 15, 23, 24.)

CHAPTER II

THE OBJECTS OF THE ORGANIZATIONS

I. In General.

IT will be noticed that the League of Nations and the Permanent Organization are two distinct organizations, with the same membership, but with different objects. The reason for these two distinct organizations is not clear. The objects of the League of Nations might easily have been extended to include the objects of the Permanent Organization, the preamble of which recites that "universal peace can be established only if it is based upon social justice," and the organization of the Permanent Organization could easily have been provided for in the Covenant of the League.

II. The Objects of the League of Nations.

The preamble of the Covenant of the League is as follows:

"THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another, Agree to this Covenant of the League of Nations."

Compare this with the preamble of the Constitution of the United States:

> "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

The object of the League is "to promote international co-operation and to achieve international peace and security." The objects of our Constitution were more numerous. Our first object was "to form a more perfect Union."

> "The union of the States never was a purely artificial and arbitrary relation. By the Articles of Confederation, the Union was solemnly declared to be perpetual. And when these articles were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect Union.'" [1]

The League was an entirely new organization, not preceded by any previous confederation. It was, therefore, impossible that the object of the League should be to form a more perfect Union. What is noticeable, however, is that the treaty does not state that the object of the high contracting parties was to form a union of any kind, and that the Constitution of the League is called the Covenant of the League.

The next object of our Constitution was "to establish Justice." The establishment of justice is not stated as one of the objects of the League, but rather as one of the means by which its objects are to be achieved.

The next object in our Constitution is "to insure domestic Tranquillity." This may be regarded as substantially similar to the object of the League "to insure international peace and security."

[1] Texas *v.* White, 7 Wall. 724.
U. S. *v.* Cruikshank, 92 U. S. 549.
White *v.* Hart, 13 Wall. 650.
Wharton *v.* Wise, 153 U. S. 167.
Martin *v.* Hunter, 1 Wheat. 332.
Legal Tender Cases, 12 Wall. 554.
Scott *v.* Sandford, 19 How. 404.

The next object of our Constitution is "to provide for the common defence." This may, perhaps, be included in the object of the League "to *achieve* international peace and security." The preamble of the Covenant, however, says nothing about providing for the common defence as one of the means of achieving international peace and security. The provisions of Articles 16 and 17 of the Covenant, however, do show an intention to provide in some manner for the common defence.

The next object of our Constitution is "to promote the general Welfare." The preamble to the League uses the term "to promote international co-operation." These two terms are by no means synonymous. Under our Constitution, Article I, § 8, Congress has power to provide for the common defence and general welfare of the United States. The promotion of international co-operation is one means of providing for the general welfare of the League, but the providing for such general welfare is not one of the objects of the League, nor are there any general powers of the League authorizing it to make such provision. The object of the League is merely to promote international co-operation; that is, to encourage individual action of its Members, and not to take action itself.

The next object of our Constitution is "to secure the Blessings of Liberty to ourselves and our Posterity." There is no suggestion of the idea of liberty in the Covenant of the League. The provision of Article 23, § b, of the Covenant that the parties will "undertake to secure just treatment of the native inhabitants of territories under their control," does not suggest the idea of popular liberty. It is true, of course, that the framers of the Constitution had no thought of liberty for the negroes, and did not include them in the term "people of the United States."

III. The Objects of the Permanent Organization of Labour.

The Permanent Organization of Labour is an organization created by Part XIII of the Treaty of Versailles. The mem-

bership of this organization is assumed to be identical with the membership of the League of Nations. Like the League of Nations, it is a rudimentary super-state, but far more rudimentary than the League. Its actual power of control over its Members is so limited that the fundamental nature of the organization may readily be overlooked.

The objects of the Permanent Organization are set forth in the preamble, which is as follows:

> "Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;
>
> "And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;"
>
> "Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;
>
> "The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following:"

Chapter I provides for the permanent organization as follows:

"Article 387. A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble."

In addition to the objects stated in the preamble, Section II, Article 427, contains certain general principles which should be considered in connection with the preamble.

"The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

"They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

"Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

"Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world."

The competence of the International Labour Organization extends to the international regulation of the conditions of labour of persons employed in agriculture.[2]

While the organization and development of means of production were not included in the sphere of the International Labour Organization, it is not necessary that the Organization totally exclude from its consideration the effect upon production of measures which it may seek to promote for the benefit of the workers. The consideration, however, of methods of organization and developing production from the economic point of view is in itself alien to the sphere of activity marked out for the International Labour Organization by Part XIII of the Treaty.[3]

[2] Second Advisory Opinion of the Permanent Court of International Justice. Publications of Permanent Court, Series B, No. 2.—Two judges dissenting.
[3] Third Advisory Opinion—Publications of Permanent Court, Series B, No. 3.

CHAPTER III

MEMBERSHIP IN THE NEW ORGANIZATIONS

I. In General.

THE parties to our Constitution were "the people of the United States."

The Constitution emanated from the people and was not the act of sovereign and independent States. The above phrase contemplates the body of electors composing the States, the terms "people" and "citizens" being synonymous. Negroes, whether free or slaves, were not included in the term "people of the United States" at that time.[1]

The original Members of the League and of the Permanent Organization, consist of those signatories named in the annex to the Covenant which ratified the Treaty. These are all nations, Canada, Australia, South Africa, New Zealand and India being treated as nations distinct from the British Empire. The difference between these two forms of union is of great consequence. The framers of our Constitution studied all known previous federations.

> "In the search for precedents, modern history was also examined to discover the working principles of Federal Constitutions. The Germanic Federation from a parade of its Constitutional powers in the representative and head of the Confederacy, suggested that it might form an exception to the general character which belonged to its kind. 'Nothing could be further from the reality,' says Madison, 'the fundamental principle on which it rests, that the Empire is a community of sovereigns, and that

[1] Penhallow *v.* Doane, 3 Dall. 93.
Scott *v.* Sandford, 19 How. 404.
Martin *v.* Hunter, 1 Wheat. 324.
Chisholm *v.* Georgia, 2 Dall. 470.
McCulloch *v.* Maryland, 4 Wheat. 316.
Barron *v.* Baltimore, 7 Pet. 247.

the laws are addressed to sovereigns, renders the Empire a nerveless body, incapable of regulating its own members, and insecure against external dangers.'

"The Germanic Federation was composed of a Diet, representing the component members of the Confederacy; the Emperor, who was the executive magistrate with a negative on the decrees of the Diet; and an Imperial Chamber and an Aulic Council; the latter two were judicial tribunals having supreme jurisdiction in controversies concerning the Empire or happenings among its members.

"The Diet possessed general powers of legislation for the Empire, the right of declaring war or making peace, contracting alliances, assessing quotas of troops and money, constructing fortresses, regulating coin, admitting new members, and subjecting disobedient members to the ban of the Empire, the effect of which was to degrade a party from his sovereign rights and forfeit his possessions.

"That the Emperor had the

exclusive right to make propositions to the Diet, to negative its resolutions, to name ambassadors, to confer dignities and titles, to fill vacant electorates, to found universities, to grant privileges not injurious to the States of the Empire, to receive and apply the public revenues, and generally to watch over the public safety. In certain cases the electors formed a Council to him. In quality of Emperor he possessed no territory within the Empire, nor received any revenue for his support. But his revenues and dominions in other qualities constituted him one of the most powerful princes in Europe. The members of the Confederacy were expressly restricted from entering into compacts prejudicial to the Empire; from imposing tolls and duties on their mutual intercourse without the consent of the Emperor and the Diet, from altering the value of money, from doing injustice to one another, or from affording assistance or retreat to disturbers of the public peace. And the ban was denounced against such as should violate any of these restrictions. The members of the Diet as such

were subject in all cases to be judged by the Emperor and the Diet, and in their private capacities by the Aulic Council and the Imperial Chamber.' " [2]

The framers of our Constitution, as shown by the above quotation from Madison, were not impressed with the principles on which the Germanic federation was founded. The Empire was a community of sovereigns; the Diet was a representation of sovereigns; and the law was addressed to sovereigns. The League of Nations, like the Germanic Federation, is a community of sovereigns; but there is a fundamental difference in the fact that the sovereignty now recognized is the sovereignty of the nation, whereas, under the Empire, sovereignty was largely a personal matter, the extreme theory of personal sovereignty being so clearly expressed by Louis XIV in his famous assertion, *"l'état, c'est moi."* Madison's criticism of the Germanic Federation, therefore, does not necessarily apply to the League of Nations, by reason of this change in the fundamental idea of sovereignty. It simply raises the question whether the change in the notion of sovereignty from the personal to the national idea is sufficient to overcome the difficulties with which the Empire had to contend.

II. Membership in the Organizations.

1. Membership in the League of Nations.

As has already been seen, the United States Constitution emanated from the people and was not the act of sovereign and independent States. The States are often spoken of as members of the Union; an expression which, from a popular standpoint, is sufficiently accurate, but which fails to express the true legal situation. The Constitution emanated from the people. It created a new nation, the *members* of which were the *citizens* of that nation. It is true, that the Constitution did not come into effect until its ratification by the conventions of nine States under Article VII, which provides "that the

[2] "Federal Systems," Poley, pp. 39, 40.

ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same." Such ratification, however, was merely a condition precedent to the establishment of the Constitution. The Constitution did not make the States members of a federation, as the Germanic sovereigns were members of the Germanic Federation, or Empire. The States surrendered a portion of their sovereignty to the United States, but as to the remainder, retained their independent existence. They did not in any legal sense, however, become members of the new political society formed by the Constitution, nor does the fact that the consent of three-fourths of the States is required for amendment, alter the situation. Such consent is merely a condition precedent to the adoption of any amendment.

The League of Nations, on the other hand, is composed entirely of nations. The Covenant provides for two classes of Members; original Members, and others.

A. ORIGINAL MEMBERSHIP.

> "The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League." (Art. 1.)

The Annex is as follows:

ANNEX

1. Original Members of the League of Nations Signatories of the Treaty of Peace.

United States of America.	Bolivia.
Belgium.	Brazil.

British Empire.
Canada.
Australia.
South Africa.
New Zealand.
India.
China.
Cuba.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Roumania.
Serb-Croat-Slovene State.
Siam.
Czecho-Slovakia.
Uruguay.

States invited to Accede to the Covenant.

Argentine Republic.
Chili.
Colombia.
Denmark.
Netherlands.
Norway.
Paraguay.
Persia.
Salvador.
Spain.
Sweden.
Switzerland.
Venezuela.

The failure of the United States Senate to ratify the Treaty was not treated by the other nations as dissolving the League, but merely as eliminating the United States from membership.

It must be noted that there are two classes of original members: First, those of the signatories which are named in the Annex; second, such of those other States named in the annex as shall accede without reservation to this Covenant. Original membership, therefore, is composed of the signatories named in the annex, except the United States, and of those States invited to accede which deposited with the secretariat a declaration within two months of the going into force of the Covenant.

B. NEW MEMBERS.

> "Art. 1. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments."

It must be noted that the treaty recognizes the existence as self-governing States, of the six nations connected with the British Empire. The British Empire formerly included all of these nations. Five of them were recognized as nations distinct from the Empire, and a sixth, the Irish Free State, has since joined the League. What was formerly known as the British Empire, is now often referred to as the British Commonwealth of Nations. The extraordinary thing about this Commonwealth is that it has no constitution whatever; that the seven nations are bound together by ties of blood and not of ink; and that they all have a common king, who reigns, but does not govern. The future legal relations of the different members of the British Commonwealth of Nations will furnish a legal problem fully as interesting as any concerning the League of Nations itself. The difference between the bonds of sympathy and the bonds of law is clearly shown by the fact that the League of Nations, with a written Covenant or Constitution, has had great difficulty in keeping its members from fighting, whereas the nations composing the British Commonwealth, without any written tie, have fought side by side for the preservation of a union the terms of which have not yet been defined on paper. The provision for the admission of new members to the League should be compared with Article IV, § 3 of the United States Constitution:

> "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be

formed by the Junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well of the Congress."

The distinction between the admission of a new member to the League and a new State to the Union should be noted.

The effect of the admission of a new State into the Union is not to make the State, as such, a member of the national organization, but to extend the Constitution to include the new State, and to give the new State the same status as the original States.

When a new State is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original States, and such powers may not be constitutionally diminished, impaired, or shorn away by any conditions, compacts, or stipulations embraced in the act under which the new State came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission.[3]

For admission of a new member to the League, three things are necessary: First, a vote of two-thirds of the Assembly; second, effective guarantees by the Member of its sincere intention to observe its national obligations; and, third, the acceptance of such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments. It is not stated who shall decide whether effective guarantees have been given, and it is not perceived that this provision adds anything to the requirement of a two-thirds vote of the Assembly.

The provision that the new Member shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments, merely makes the acceptance of such regulations a condition of its admission to membership. This provision does not, on the one hand, authorize the League to make regulations governing the Member after its admission to membership, nor, on the other hand, does it provide for the situation where, after accepting the

[3] Coyle *v.* Smith, *221* U. S. 559.
U. S. *v.* Sandoval, *231* U. S. *28.*

regulation and being admitted to membership, the member refuses further compliance with the regulations. What may be the effect of such subsequent non-compliance will be considered hereafter.

C. SPECIAL MEMBERSHIP.

A form of special membership is provided for in Article 17, which is as follows:

> "In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.
>
> "Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.
>
> "If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.
>
> "If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute."

The language of this article is peculiar. It appears to create a class of temporary Members with the obligations of the regular Members, but without their rights. The obligations of membership are accepted simply "for the purposes of such

dispute." The phrase, "upon such conditions as the Council may deem just," seems to authorize the Council to grant rights to the States accepting the obligations of membership. It should be noticed that this Article assumes a moral obligation on States not Members of the League to accept the obligations of membership in the League for the purposes of all their disputes. The language used, "In the event of a dispute," that is, of any dispute, the States "shall be invited"; not, "may be invited," but "*shall* be invited" to accept the obligations of membership in the League for the purposes of such disputes. This Article imposes upon the Council a duty to invite non-members of the League to accept the obligations of membership in the League for purposes of any dispute. Moreover, the Article asserts by implication a moral obligation on the part of such non-member States to accept the invitation which the Council is required to extend. The last clause of the Article is as follows: "If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute." It follows, therefore, that "in the event of a dispute" between the United States and Mexico, the United States and Mexico "shall be invited to accept the obligations of membership in the League for the purposes of such dispute," and that if the invitation is refused, "the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute." Just what measures the Council can take, and how it can persuade the United States and Mexico, in such a case, to settle their dispute is not clear; but the assertion of authority on the part of the League over States which are not Members of the League, is an interesting novelty.

D. TERMINATION OF MEMBERSHIP.

Membership in the League may be terminated either voluntarily or involuntarily.

(1) *Voluntary Termination.*

Voluntary termination may occur in one of two ways:

(*a*) *By withdrawal.* Article 1. "Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal."

This provision for withdrawal raises some interesting questions. It is not stated how, or by whom, the fact of the performance of its international obligations and its obligations under this Covenant by the Member seeking to withdraw, shall be determined. In the case of an ordinary society, like a club, a provision that the member may resign if all his obligations to the club are paid, is not uncommon. If the club claims that the member owes a bill which he disputes, and for that reason refuses to accept his resignation, the question whether the bill is due or not may be tested in the courts. The Covenant fails to state whether the performance of its obligations by the withdrawing member is to be determined by the other Members of the League in the Assembly or in the Council; or whether it is a matter to be arbitrated; or whether it is a matter to be submitted to the Permanent Court of International Justice. It must be noted that the right of withdrawal is absolute. It is based upon the fact of the Member's performance of its obligations, and not upon any determination of that fact by any person. If the performance of the Member's obligations is disputed by the League, the effectiveness of the withdrawal depends upon the fact of performance solely, but in the absence of a provision for the determination of this fact, in case of a dispute, there appears to be no method of settling the question as to whether or not withdrawal by a Member has been effected.

(*b*) *Withdrawal by Dissent.* Under Article 26 any Member of the League which signifies its dissent from an amend-

ment to the Covenant, shall cease to be a Member of the League.

(2) *Involuntary termination of membership.*

Under Article 16,

> "Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon."

It must be noted that this provision requires the unanimous vote of the Council, whereas in general, under Article 5, all that is required is the agreement of all the Members of the League represented at the meeting. It would seem, however, that expulsion might be effected by a vote of all the representatives of the Members of the League present at a Council meeting, with the subsequent concurrence of the representatives of all the other members of the League represented on the Council, excepting, of course, the member expelled.

E. SUSPENSION FROM MEMBERSHIP.

There is no express provision for suspension from membership from the League, but attention is called to the following provision of Article 13.

> "The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

Under this provision the Council appears to have authority to propose suspension from membership, but unless "propose" means "order" this clause is very obscure.

Under the United States Constitution the right of secession was not expressly recognized. The Southern States, in 1861, claimed that right, but without success. The permanence of

the United States Government, therefore, cannot be affected by any action of the States; whereas the League of Nations, by its Covenant, may be destroyed in two years by the withdrawal of all of its members.

2. Membership in the Permanent Organization of Labour.

Article 387. "The original Members of the League of Nations shall be the original Members of this Organisation, and hereafter membership of the League of Nations shall carry with it membership of the said organisation."

"The new International Labour Organisation, established by Part XIII of the Treaty of Versailles, presents many points of interest to students of international and constitutional law. In some respects it is original and unique. It is apt to be regarded loosely as forming part of the League of Nations, but that is not the fact. It holds a strangely detached position. I say 'strangely' without any suggestion of criticism. Personally, I consider that the Labour Organisation possesses certain constitutional advantages which would be seriously impaired if it were linked more closely to the League of Nations, in any case until the League of Nations Covenant is amended in such a way as to conform more closely to modern ideas of democratic control. * * *

"The Members of the Organisation are the same as those of the League in so far as Members of the League are bound to be Members of the Labour Organisation. But the inverse—whether Members of the Labour Organisation are bound to be Members of the League—is still a subject of controversy. In actual fact, Germany and Austria have been admitted to the Labour Organisation and not yet to the League. But those who support the view that the Labour Organisation should consist exclusively of Members of the League of Nations argue that the case of Germany and Austria is peculiar and that the position is merely temporary. The popular view is that

all countries should be encouraged to join the Labour Organisation whether they feel inclined to join the League or not. This is the common-sense view, seeing that the Labour Organisation—designed to prevent one country from undercutting others in trade by resorting to 'sweated' conditions of labour—loses half its force if not joined by all States concerned in any degree in international trade, whether or not for any reason they may remain outside the League of Nations itself. The discreet Governmental view seems to incline to the exclusion of all countries not members of the League. The text of the Treaty does not afford a sure guide on this matter. 'The original Members of the League of Nations shall be the original Members of this Organisation, and hereafter membership of the League of Nations shall carry with it membership of the said Organisation' (Art. 387). That is all. If, owing to the absence of any important countries from the League of Nations, the question of interpreting this Article becomes acute, it will be referred under Article 423 to the Permanent Court of International Justice to be set up by the League of Nations."[4]

What is called above "the discreet governmental view" seems to be primary legal view of the situation. Article 387 provides, first, for original membership; and, second, for additional members, who become Members of the Organization of Labour by becoming Members of the League of Nations. Part XIII of the Treaty of Versailles is the Constitution of the Organization of Labour. No provision is made for the election of Members, and the obvious inference from the failure to make such provision is that it was not the intention of the Members to have new Members elected to membership. To allow nations to be Members of the Permanent Organization who are not Members of the League of Nations, is to permit such nations to invoke the compulsory jurisdiction of the Permanent Court of International Justice under the provisions of Part XIII. Such a ruling would also relieve

[4] The New International Labour Organization, by Sophy Sanger. 29th Report of The International Law Association, pp. 329, 330, 331.

those Members of the Organization of Labour which are not Members of the League of Nations from their share of the expenses of the Organization which, under Article 399, are to be paid out of the general funds of the League. Again, Article 392 provides "that the International Labour Office shall be established at the seat of the League of Nations as part of the organization of the League." In spite of the obscurity of Part XIII, in regard to the matter of membership, careful study of its provisions shows that identity of membership between the League of Nations and the Organization of Labour was intended by the Treaty. Notwithstanding the legal construction as to identity of membership which the Treaty seems to require, another question of law arises with reference to the action of the Organization of Labour in admitting new Members. Part XIII creates a new organization, and is the constitution of that organization. The constitution of an organization, however, is nothing but an expression of the will of all the Members of that organization. A difference must here be noted between corporations chartered or licensed by a superior authority, and voluntary organizations. In the case of a corporation, not even the unanimous consent of every Member will make an *ultra vires* contract binding upon the corporate assets.[5]

The reason for this rule is the doctrine of public policy restricting a corporation to the objects for which it is chartered. In the case of the voluntary association, however, the association acts without any license from the State. No member may disregard the constitution of the association, nor can their constitution be amended except in the manner prescribed by its own terms. The members of the association, by unanimous consent, however, may disregard the constitution entirely, for the simple reason that if all consent to such action, there is no one to object to it. While the Organization of Labour, therefore, is a corporation, in the sense of being a legal person, it is not a corporation which derives a franchise from any superior authority, as is the case with ordinary corporations, for it cannot be said that the Organization of Labour holds a

[5] Machen on Corporations, Vol. 2, § 1028.

franchise from the League of Nations. It follows, therefore, that the Organization of Labour may by unanimous consent do whatever the Members please, regardless of the provisions of Part XIII; just as it follows that without such unanimous consent no action can be taken by the Organization contrary to the provisions of Part XIII, except by the amendment of Part XIII in the manner prescribed therein. If the Permanent Organization of Labour, therefore, by unanimous consent, admits to membership nations which are not Members of the League, those nations legally become Members of the Organization. Not merely do they become Members of the Organization, but they become Members in perpetuity, for the simple reason that Part XIII contains no provision for the withdrawal of Members, or for the expulsion of Members. The only withdrawal from the Organization of Labour which is permitted is the withdrawal of a nation which is a Member of the League by withdrawal from the League itself, and even that right of withdrawal is a matter of inference rather than of direct statement.

While Article 387 provides that the original Members of the League shall be the original members of this Organization, and that hereafter membershp of the League shall carry with it membership of the said organization, it does not provide any means for terminating membership in the Permanent Organization. It was probably the intention of the framers of the Treaty that membership in the two Organizations should be identical, but it does not follow as a matter of law that because membership in the League carries with it membership in the Permanent Organization, termination of membership in the League also involves termination of membership in the Permanent Organization.

This matter of membership is one of the utmost importance. Part XIII in no way provides for any termination of membership in the Organization of Labour. Considering that Part I and Part XIII are parts of the same document; that the objects of the League and of the Organization of Labour are harmonious and supplementary; that the Organization of Labour utilizes the machinery of the League in many cases; and that

the membership in the League carries with it membership in the Organization of Labour, it seems a reasonable conclusion, on general principles of constitutional law, that termination of membership in the League was intended to produce termination of membership in the Organization of Labour at the same time. The omission of such provision from Part XIII is one of many instances in which the Treaty is obscure, but the constitutional interpretation of the Treaty that membership in the two organizations is necessarily identical, seems the sound one.

It should be noted that an amendment of Part XIII does not authorize a dissenting Member to withdraw from the Permanent Organization of Labour, whereas an amendment of Part I does authorize a dissenting Member of the League to withdraw from the League. Unless the withdrawal from the League, therefore, is recognized as also permitting a withdrawal from the Permanent Organization, the rights of a Member in the Permanent Organization may be radically altered by an amendment of Part XIII without any opportunity on the part of such Member to withdraw.

CHAPTER IV

THE GENERAL SCHEMES OF ORGANIZATION

I. Introductory.

WHILE the memberships of the League of Nations and of the Permanent Organization of Labour are assumed to be identical,[1] the organization of the two bodies is quite different. Each body constitutes a rudimentary super-state. In neither case were the Members willing to agree upon a super-state with definite legislative, executive and judicial bodies. In fact, the very notion of a super-state was repugnant to many people, and one of the arguments in favour of the ratification of the Treaty by the United States Senate was that no super-state was created by the Treaty, but that everything was a mere matter of contract. Rudimentary forms of life, however, exist, not only in the animal kingdom, but in human organizations as well; and any adequate analysis of the Treaty of Versailles shows that the contracting parties created two new political organisms of which the parties are members incorporate. These organisms are of a novel character, and our legal terminology supplies no satisfactory word to describe them. The term "super-state" is used simply for lack of any better term. These two organisms are identical in membership, and, to some extent, have the same organs. Thus, the Secretary-General of the League of Nations exercises numerous functions on behalf of the Permanent Organization of Labour. The control exercised by either body over its members is of a peculiar and limited character, and differs in the two bodies. There is nothing new in a political organism with very limited control of the body over its members. Both in England and in France the control of the central authority

[1] See ante Chapter III, II, 2.

of the State, as represented by the King, over the local authorities, as represented by the Nobles, while always claimed, was not actually established until after a long struggle between the two authorities. While the authority given to these two new organisms by the Treaty of Versailles is peculiarly limited, the situation of the parties is such that even the exercise of that limited authority is not an easy matter, as is shown by the recent disputes between Italy and Greece and between England and Egypt. For an understanding of the two organisms, two things are necessary: First, an explanation of the organization of each; and, second, an analysis of the distribution of the legislative, executive and judicial powers of the two organisms.

II. Organization of the League of Nations.

1. General Analysis.

Article 2 of the Covenant of the League is as follows:

> "The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council with a permanent Secretariat."

It is interesting to contrast the language of this Article with the provisions of the Articles of Confederation of 1777, and of the United States Constitution. The provision of the Covenant is that "the action of the League under this Covenant shall be effected through the instrumentality," etc. Article V of the Articles of Confederation provides:

> "For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in each year, with a power reserved to each State, to recall its delegates, or any of them."

The Constitution provides, Article I, Section 1:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."
>
> "The executive Power shall be vested in a President of the United States of America." (Article II, § 1.)
>
> "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." (Article III, § 1.)

The Constitution, proceeding on the theory of the separation of powers, vests the legislative power in Congress, the executive power in the President, and the judicial power in the Courts. The Constitution, however, created a complete and highly organised political society. The Articles of Confederation created a more rudimentary political society, and simply provided for a Congress for the more convenient management of the general interests of the United States. This Congress had limited powers, both legislative and executive, under Article IX. Article IX also provided:

> "The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever."

This, apparently, vested the judicial power in Congress, but the provisions following show that the power of Congress in this matter was purely executive, and consisted of the power of appointment of a special court or commission to exercise the judicial function.

The Covenant of the League does not undertake to separate clearly the different powers. In general, however, it may be observed that the legislative power of the League is vested in the Assembly and in the Council; that the executive power is divided among the Assembly, the Council, and the Secretary General; and that the judicial power is not vested in any body

created by the Covenant itself, but is to be exercised by the Permanent Court of International Justice to be established under the provisions of Article 14.

The Constitution grants specific legislative powers to the United States. The Covenant does not in terms purport to grant legislative powers to the League. What legislative powers are actually granted to the League will be hereafter discussed. *Post,* Chapter VI.

The Constitution vests the legislative powers granted to the United States in a Congress composed of two bodies. The Covenant says that "the action of the League shall be effected through the instrumentality of an Assembly and of a Council with a permanent Secretariat."

The Constitution provides, Article II, Section 1, that "The executive Power shall be vested in a President of the United States of America."

The Covenant of the League in its articles of confederation does not provide for any executive power. How the executive power is to be exercised will be discussed hereafter. *Post,* Chapter V.

The Constitution provides: "Article III. Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

The Covenant does not purport to vest the judicial power of the League in any body created by the Covenant itself.

> "The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." (Article 14.)

The Covenant, therefore, contemplates that no judicial action shall be taken by the League until the establishment of the

Permanent Court. In regard to this Court there has been more or less confusion of thought. The Court was created by a statute approved by the Assembly of the League of Nations December 13, 1920, and adopted by the Members individually. It is obvious that the Court is not a body independent of the League,[2] but is the body which exercises the judicial power of the League just as the United States District Courts, created by Congress, exercise the judicial power of the United States. From a legal standpoint the differencees between the Supreme Court of the United States and the Permanent Court of International Justice, are the following:

1. The Supreme Court of the United States has compulsory jurisdiction over all of the States, whereas the compulsory jurisdiction of the Permanent Court is limited to those Members of the League who sign the protocol, or some other treaty conferring compulsory jurisdiction, as in the case of mandates.[3]

2. The United States Supreme Court was created by the Constitution, whereas the Permanent Court of International Justice was created, not by the Covenant of the League, but, like the District Courts of the United States, by a statute enacted in pursuance of that Covenant.

3. The Supreme Court of the United States in addition to its original jurisdiction over the States, has also an appellate jurisdiction as to cases arising in other Courts, whereas the Permanent Court has no appellate jurisdiction under the Covenant of the League, but has quasi-appellate jurisdiction as to a Commission of Inquiry appointed by the Permanent Organization of Labour, under Part XIII of the Treaty.

4. The original jurisdiction of the Supreme Court of the United States is as follows: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction." (Article III, § 2.)

The Permanent Court has jurisdiction only in cases where

[2] Prof. Manley O. Hudson maintains a contrary view in 18 Am. Bar Assn. Journal, Jan. 1924; but see Boston University Law Review, IV, 157.

[3] See Greece v. Great Britain, Publications of the Permanent Court, Series A, No. 2.

all the parties are States or Members of the League of Nations. (Statute for the Permanent Court, Art. 34.)

2. The Council.

A. COMPOSITION OF THE COUNCIL.

"The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain, and Greece shall be Members of the Council."

"With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council." (Covenant, Art. 4.)

B. MEETINGS OF THE COUNCIL.

"The Council shall meet from time to time as occasion may require, and at least once a year, at the seat of the League or at such other place as may be decided upon." (Article 5.)

"The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America." (Article 5.)

"Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League

forthwith summon a meeting of the Council." (Article 11.)

C. POWERS OF THE COUNCIL.

"The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." (Article 4.)

The relation of the Assembly to the Council is extraordinarily vague. Each body may deal at its meetings with the same subject. The two bodies are separate and independent. They do not form one Congress, as do our Senate and House of Representatives. No provision is made that the authority of the Council shall be superior to that of the Assembly, although the Council is evidently regarded as a more select and important body. We have, therefore, in the constitution of the League, a legal defect of the most serious character; that is the existence of two bodies having concurrent and legislative authority over the same subject matter. This defect is probably due to the fact that the treaty was drawn by persons who had either a radical disagreement or else an extraordinary misapprehension of the nature of the League Covenant. For a discussion of the powers of the Council, see Chapter V, as to the Executive; Chapter VI, as to the Legislative; and Chapter VII as to the Judicial.

D. PROCEDURE OF THE COUNCIL.

"At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative." (Article 4.)

"Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

"All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Com-

mittees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting." (Article 5.)

3. The Assembly.

A. COMPOSITION OF THE ASSEMBLY.

"Art. 3. The Assembly shall consist of Representatives of the Members of the League."

"At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives."

This provision does not state how the vote of the Member of the League shall be cast when it has more than one representative. The natural inference, however, is that if the Member has two representatives, they must agree, or it can cast no vote; while if it has three representatives, the vote may be cast by two of them.

B. MEETINGS OF THE ASSEMBLY.

"The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon." (Article 3.)

This provision fails to state what the stated intervals shall be, or who shall state them, whereas, in Article 1, § 4, clause 2 of our Constitution it is provided that "The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day."

C. PROCEDURE OF THE ASSEMBLY.

"All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated

by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting." (Article 5.)

D. CALLS FOR MEETINGS.

"The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America." (Article 5.)

E. PLACE OF MEETINGS OF THE ASSEMBLY.

"The Seat of the League is established at Geneva.

"The Council may at any time decide that the seat of the League shall be established elsewhere." (Article 7.)

F. POWERS OF THE ASSEMBLY.

"The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." (Article 3.)

This language, from a legal standpoint, is extraordinary. It is broad enough to cover almost everything; radically different from the provisions of Article 1, § 8, of our Constitution giving Congress specific powers. The language of that section, however, is that "Congress shall have power." The language of the Covenant is "The Assembly may deal . . . with any matter," etc. In *dealing* with any subject there are only two possibilities: First, discussion; second, action. The practical effect of this provision, therefore, is to give to the Assembly far wider legislative powers than have ever been granted to Congress. The practical restriction on the exercise of such powers is contained in Article 5.

"Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

"All matters of procedure at meetings of the Assembly

or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the Meeting." (Article 5.)

Congress, then, is a body with limited powers, which may be exercised by a majority vote of both houses with the consent of the President, or by a two-thirds vote of both houses without the consent of the President. The Assembly of the League, on the other hand, is a body with almost unlimited powers which can be exercised only by the agreement of all the members of the League represented at the meeting. The action of Congress is restrained by Constitutional limitation of the *powers* of the body; while the action of the Assembly is restrained by a special law of *inertia,* requiring more than the ordinary force of a majority of its members to set the Assembly in motion.

4. The Secretariat.

A. Composition of the Secretariat.

"The permanent Secretariat shall be at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required." (Article 6.)

"All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women." (Article 7.)

Under Article 22,

"A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

It is not here provided whether the Commission shall have power to select its own secretaries or not.

Article 24, however, provides that the Council may include as a part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

It is perhaps, a fair inference, therefore, that the Secretariat is to act for the Commission on Mandatories and also for all international bureaus placed under the League.

B. APPOINTMENT OF THE SECRETARIAT.

> "The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.
>
> "The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council." (Article 6.)

C. REMOVAL OF THE SECRETARIAT.

The relations of the Secretary-General to the Secretariat are not clearly defined. The Secretary-General has the power of appointment of the secretaries and staff of the Secretariat with the approval of the Council. It may fairly be assumed, although not stated, that the secretaries and staff are subject to the direction and control of the Secretary-General. Whether they are subject to removal by him is not clear. The precedents in administrative law show that, in general, the power of removal accompanies the power of appointment. Thus, in the case of the President of the United States:

> "The constitution gave the power of removal to no authority expressly. The question came up before the first Congress in the discussion of the act organising the department of foreign affairs. Although there was a difference of opinion in the Congress as to who under the constitution possessed this power, it was fully decided by a very small majority that the power of removal was a part of the executive power and therefore belonged to the President. . . . The early interpretation of the

constitution must be regarded as the correct one at the present time. That is, the President alone has the power of removal of even senate appointments." [4]

In France also:

"The President has in the case of purely administrative officers an unlimited power of removal which is even more extensive than his power of appointment." [5]

In Germany, prior to the revolution, it was the rule of the German States that "The Prince has a wide power of removal even of local officers." [6]

In the German Empire the power of appointment was coupled with the power of removal from active office by the retirement of an official.[7]

In England the power of the Crown to remove is as great as its power to appoint, except as limited by statute.[8]

It will probably be held, therefore, that the Secretary-General may remove the secretaries and staff of the Secretariat. Curiously enough, although the Covenant of the League provides for the Permanent Court of International Justice, that Court is open only to States or Members of the League under Article 34 of the statute of the Permanent Court. Any question as to the relation of individuals to the League is left without any provision for judicial determination.

The rights of individuals with reference to the League are, therefore, in this anomalous position: Representatives of the Members of the League, and officials of the League, when engaged on business of the League, enjoy diplomatic privileges and immunities. It is, therefore, impossible for a clerk of the League, for example, to assert any rights against the League in a Swiss court, because the League is a sovereign power; nor can he bring any action against the representatives or officials of the League in the Swiss court, because they have

[4] Goodnow on Comparative Administrative Law, Vol. 1, pp. 64, 65.
[5] Goodnow on Comparative Administrative Law, Vol. 1, p. 84.
[6] Goodnow on Comparative Administrative Law, Vol. 1, p. 91.
[7] Goodnow on Comparative Administrative Law, Vol. 1, p. 94.
[8] Goodnow on Comparative Administrative Law, Vol. 1, p. 100.

diplomatic immunity; nor can he bring any action against the League, or any of its officials, in a League Court, because the only court of the League is the Permanent Court of International Justice, the jurisdiction of which is limited to States; nor can he have any redress through the government of which he is a national, if that government is a Member of the League, because the League itself cannot be sued in its own or any other court, nor can a Member of the League make demands for satisfaction on the League itself, because it is a Member and, therefore, cannot be both plaintiff and defendant. In other words, the Covenant of the League entirely overlooks the provision of any judicial remedy for any wrong suffered by its own employees.

There is no provision in the Covenant as to the term of office of the Secretary-General. Article 6 leaves it uncertain as to whether this appointment is for life, or until his successor is appointed, nor is anything said about the removal of the Secretary-General. If the principles above set forth as to the removal of officers are to apply, the Secretary-General is subject to removal by the Council at its discretion.

D. EXPENSES OF THE SECRETARIAT.

It was originally provided that "The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union." (Article 6.)

> "The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League." (Article 24.)

Article 6 has been amended, and it is now provided that "The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly." This amendment came into force August 13, 1924.[9]

[9] Hudson, 38 Harvard Law Review, p. 928.

E. FUNCTIONS OF THE SECRETARIAT.

The functions of the Secretary-General are as fellows:

(1) *To act at all meetings of the Assembly and of the Council.*

> "The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council." (Article 6.)

(2) *To summon meetings of the Council in cases of emergency.*

> "Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council." (Article 11.)

(3) *To make arrangements for investigation and consideration of disputes between Members which are submitted to the Council.*

> "If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof." (Article 15.)

(4) *To collect and distribute information, and render assistance in matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions.*

"In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable." (Article 24.)

(5) *To publish treaties or international engagements registered with the League.*

"Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered." (Article 18.)

(6) *To give notice to Members of declarations of accession to the Covenant.*

"The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League." (Article 1.)

It must be noted that the last three functions, for the collection of information, etc., for the publication of treaties and for the sending of notice of accession, are imposed on the Secretariat, and not upon the Secretary-General. There appears to be no reason for this distinction. Curiously enough, there is a lack of general definition of the duties of the Secre-

tary-General and of his relation to the Secretariat. The League Covenant creates an organization, but in this, as in other matters, is not clear and precise as to the details of that organization. It may fairly be assumed from the nature of the case that in addition to the functions already expressly noted, it is the duty of the Secretary-General to keep the records of the Assembly or the Council, and to receive all communications addressed to the League, or to the Assembly, or the Council, and to communicate the action of the Assembly or the Council to the Members or to any other person to whom such communication shall be sent.

III. The Organization of the Permanent Organization of Labour.

1. In General.

Art. 388 of the Treaty is as follows:—

"The permanent organisation shall consist of:

(1) a General Conference of Representatives of the Members and

(2) an International Labour Office controlled by the Governing Body described in Article 393."

2. The General Conference.

A. Composition of the General Conference.

(1) *Delegates.*

"It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members." (Article 389.)

(2) *Advisers.*

"Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affect-

ing women are to be considered by the Conference, one at least of the advisers should be a woman." (Article 389.)

(3) *Nomination of non-Government Delegates and Advisers.*

"The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries." (Article 389.)

In a country where there are several organizations of workers and employers, all of these organizations may be taken into consideration in the nomination of a workers' and employers' delegate, and not simply that one which has the largest membership, even though the one may be the "most representative." The Netherlands government in 1921 nominated a delegate in agreement with certain trade unions having a membership of 282,455 trade unionists, none of which organizations had a membership in excess of 155,642. Another organization which did not agree with the nomination had a membership of 218,596 trade unionists. The Permanent Court held that the delegate was properly nominated.[10]

(4) *Communication of Names of Delegates and Advisers.*

"The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members." (Article 389.)

(5) *Credentials of Delegates and Advisers.*

"The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article." (Article 389.)

[1] Publications of the Permanent Court, Series B, No. 1.

B. MEETINGS OF THE GENERAL CONFERENCE.

"The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year." (Article 389.)

"The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present." (Article 391.)

C. PROCEDURE OF THE GENERAL CONFERENCE.

(1) *Speaking and Voting.*

"Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

"A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote." (Article 389.)

"Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

"If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Confeernce, but not to vote.

"If in accordance with Article 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the present Article shall apply as if that Delegate had not been nominated." (Article 390.)

(2) *Agenda.*

"The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any

suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article 389." (Article 400.)

"The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed." (Article 401.)

"Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the Members of the Permanent Organisation.

"Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

"If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting." (Article 402.)

(3) *President and Committees.*

"The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter." (Article 403.)

(4) *Vote necessary for Action.*

"Except as otherwise expressly provided in this Part of the present Treaty, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference." (Article 403.)

(5) *Appointment of Experts.*

"The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote." (Article 404.)

(6) *Submission of Recommendations and Draft Conventions.*

"When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (b) of a draft international convention for ratification by the Members.

"In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

"In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

"A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the Members." (Article 405.)

D. POWERS OF THE GENERAL CONFERENCE.

It will be noted that the function of the Conference is limited to the submission of recommendations or of draft conventions

to the Members. Legislative power over the Members, is, therefore, not vested in the Conference itself. A careful study of the Treaty, however, shows that under the Constitution of the Permanent Organization, the ratification by two or more Members of any convention drafted by the International Conference under Article 405, constitutes a contract legally binding on the members ratifying. That the law of the Permanent Organization of Labour requires the observance of such contract by the parties and provides definite sanctions to compel the observance of that law appears from the following articles:

> "Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles."
>
> "The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 409.
>
> "If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.
>
> "The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.
>
> "When any matter arising out of Articles 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on

which the matter will be considered shall be given to the Government in question." (Article 411.)

The Commission of Enquiry shall be constituted in accordance with the following provisions:

"Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Enquiry shall be drawn.

"The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination if any person whose qualifications do not in its opinion comply with the requirements of the present Article.

"Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint." (Article 412.)

"The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 411, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint." (Article 413.)

"When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommen-

dations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

"It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting." (Article 414.)

"The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

"Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations." (Article 415.)

"In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice." (Article 416.)

"The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final." (Article 417.)

"The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it consider to be appropriate, and which other Governments would be justified in adopting against a defaulting Government." (Article 418.)

"In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or

in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case. (Article 419.)

"The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417, and 418 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government." (Article 420.)

It must be noted that the complaint of one Member against another under these articles is in the nature of a criminal as distinguished from a civil action. The defaulting Member is not sued for damages, and no damages are awarded against it. The complaining Member receives no compensation for the breach of contract by the defaulting Member. The judgment rendered against the defaulting Member is in the nature of a criminal judgment of limited outlawry, removing the protection of the law from the defaulting Member to a certain extent, by authorizing the other Members to take steps against the defaulting Member which would be unlawful unless sanctioned by such judgment.

3. The International Labour Office.

Organization of the International Labour Office.

The organization of the International Labour Office consists of a Governing Body of twenty-four persons, a Director, a deputy director, a staff, and the Secretary-General of the League of Nations.

A. COMPOSITION OF THE GOVERNING BODY.

The Governing Body consists of twenty-four persons, appointed as follows:

> "Twelve persons representing the Governments;
>
> "Six persons elected by the Delegates to the Conference representing the employers;
>
> "Six persons elected by the Delegates to the Conference representing the workers.
>
> "Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.
>
> "Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations." (Article 393.)

B. TERM OF OFFICE OF MEMBERS OF THE GOVERNING BODY.

The term of office is three years. (Article 393.)

C. VACANCIES IN THE GOVERNING BODY.

The method of filling vacancies, and other similar questions, may be determined by the Governing Body, subject to the approval of the Conference. (Article 393.)

D. MEETINGS AND PROCEDURE OF THE GOVERNING BODY.

> "The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate

its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body." (Article 393.)

E. THE DIRECTOR.

"There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

"The Director or his deputy shall attend all meetings of the Governing Body." (Article 394.)

F. COMMUNICATION WITH THE DIRECTOR.

"The Government Departments of any of the Members which deal with questions of industry and employment may communicate with the Director through the Representative of their Government on the Governing Body of the International Labour Office, or failing such Representative, through such other qualified official as the Government may nominate for the purpose." (Article 397.)

G. THE STAFF.

"The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities: A certain number of these persons shall be women." (Article 395.)

In the Secretariat of the League, discrimination *against* women merely is forbidden; while in that of the International Labour Office at least two women *must* be appointed.

H. THE DEPUTY DIRECTOR.

Article 394 refers to a Deputy Director. Nothing is said as to the appointment of this director, but under Article 395

his appointment appears to be vested in the Director. The only duty imposed on the Deputy is to attend all meetings of the Governing Body in the absence of the Director. The implication is, however, that the other duties and powers of the Deputy are to be determined by the Director himself. The use of the word "deputy" indicates an intention that the Director should have the power to authorize his Deputy to act in his place whenever necessary.

I. THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS.

> "The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given." (Article 398.)

This article makes the Secretary-General of the League of Nations also part of the organization of the International Labour Office with duties to that Office as well as to the League of Nations. Other duties are conferred upon the Secretary-General by Article 399. It is his duty to pay to the Director all expenses of the International Labour Office and of the meetings of the Conference or Governing Body, except those which are to be paid by the Members under Article 399. Payment by the Secretary-General is to be made out of the general funds of the League. As the Director is responsible to the Secretary-General for the proper expenditure of moneys paid to him in pursuance of Article 399, it is clearly the duty of the Secretary-General to audit such expenditures.

J. THE FUNCTIONS OF THE INTERNATIONAL LABOUR OFFICE.

(1) *To Collect and Distribute Information.*

> "The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of

international conventions, and the conduct of such special investigations as may be ordered by the Conference." (Article 396.)

(2) *To Prepare the Agenda.*

"It will prepare the agenda for the meetings of the Conference." (Article 396.)

(3) *To Deal With International Disputes.*

"It will carry out the duties required of it by the provisions of this Part of the present Treaty in connection with international disputes." (Article 396.)

(4) *To Publish a Periodical.*

"It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest." (Article 396.)

(5) *Generally.*

"Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference." (Article 396.)

CHAPTER V

THE EXECUTIVE POWER

I. The Executive Power in the League of Nations.

1. In General.

ON the Executive side the League's organization is quite rudimentary. No Chief Executive is provided for. Even in case of war affecting a member of the League, there is no provision for an Executive.

2. Executive Action by the Council.

The Covenant of the League provides for executive action by the Council in the following cases:

1. To formulate plans for the reduction of armaments, under Article 8.

2. To assent to an increase of armaments after these plans have been adopted.

3. To advise how the evil effects attendant upon the manufacture of munitions and implements of war can be prevented, under Article 9.

4. To advise upon the means by which the obligation of the Members of the League, under Article 10, shall be fulfilled.

5. To take any action that may be deemed wise and effectual to safeguard the peace of nations in case of emergency under Article 11.

6. To formulate and submit plans for the establishment of a Permanent Court of International Justice, under Article 14.

7. To direct the publication of cases submitted to the Council, under Article 15.

8. In case a dispute submitted under Article 15 is not set-

tled, to make and publish a report containing a statement of the facts of the dispute, and the recommendations which are deemed just and proper in regard thereto.

9. To refer disputes submitted under Article 15, to the Assembly.

10. To inquire and report as to disputes submitted to the Council under Article 12.

11. "It shall be the duty of the Council in such case to recommend to the several governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." (Article 16.)

This Article speaks of the "armed forces to be used," but does not state who is to use them. On the Executive side, therefore, the League is extremely weak. The Council can merely recommend what force each Member shall contribute and when such force is contributed there is no provision for any unified control of the entire forces.[1]

12. Under Article 13

> "The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

If the word "propose" is to be taken literally, the authority of the Council under this provision, is merely to propose what steps are to be taken to give effect to the award. It is not stated to whom this proposition is to be made, whether to the Assembly as a body or to the individual Members of the League. If the proposition is to be made to the Assembly, and the Assembly adopts it, the Assembly becomes for that purpose the Executive power. If the proposition on the other hand is to be made to the individual Members of the League,

[1] Germany has expressed a wish to enter the League, but desires exemption from Article 16.

action by those Members individually may be regarded as action by them as agents of the League. It is only by treating "propose" as equivalent to "decide" that any effectiveness can be given to this provision.

13. Under Article 17,

> "In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute upon such conditions as the Council may deem just.
>
> "If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute."

The provision that the Council may take such measures as will prevent hostilities, makes the Council the Executive for this purpose.

3. Executive Action by the Assembly.

The following executive powers are vested in the Assembly:

By Article 15, all the powers of the Council under Article 12 and Article 15, are given to the Assembly as regards disputes referred to the Assembly by the Council, provided that a report made by the Assembly, if concurred in by the representatives of those Members of the League represented on the Council, and of a majority of the other Members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the Members thereof other than the representatives of one or more of the parties to the dispute.

"The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world." (Article 19.)

4. Executive Action by the Permanent Court of International Justice.

Under Article 14 of the Covenant, the Court may give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly. This provision makes the Court the legal adviser of the government. This function is generally regarded as an executive rather than a judicial function. In certain American States this power is conferred upon the Supreme Court of the State by the State Constitution. In the absence of an express constitutional direction, however, the general provisions as to the separation of powers in our constitutions prevent the courts from giving legal advice to the executive or to the legislature. As to the construction placed by the Court itself in its advisory power, see *Post,* Chapter VII.

5. The Executive Powers of the Secretary-General and the Secretariat.

These have already been discussed. (*Ante,* Chapter IV.)

6. Executive Action by Members of the League.

To a large extent the executive power of the League of Nations is left in the hands of individual Members. This, of course, is a source of weakness to the government of the League, as it was to the government of the United States under the Articles of Confederation. The ties that bind the Members of the League are extremely weak. This fact was recognized in the drafting of the League Covenant, and has since been recognized by the failure of the League to deal with the dispute between Italy and Greece for fear of the with-

drawal of Italy from the League; also in the action of a majority of the Assembly in voting for an interpretation of Article 10, which would destroy whatever efficiency there might be in that Article, in order to remove American objections to the Article, and thereby to induce the United States to join the League. If the League is weak, it is weak because the great powers do not wish it strong; and because they do not wish it strong, executive action by the League government is restricted as far as possible. The Covenant does provide, however, for executive action by the Members upon the authority or recommendation of the Council, or of the Permanent Court of International Justice. Where action is taken by individual Members on recommendation of the Council, such action is truly executive in its character. Where it is taken under the authority of the Permanent Court authorizing specific action against a defaulting Member, the decree is in the nature of a decree of limited outlawry, and the action of the Members in accordance with that decree, is not truly an executive action for the enforcement of the decree, but rather the exercise of the legal right of the Members to treat the defaulting Member as an outlaw from whom the protection of the Court has been removed by its decree.

II. The Executive Power in the Permanent Organization of Labour.

The executive work of the Permanent Organization is conducted by the International Labour Office. It must be noted that the Permanent Organization has no general executive for the purpose of enforcing its laws against its Members. There are two provisions, however, for executive action in case of a breach of obligation by a Member. The first is contained in Articles 409 and 410, which are as follows:

> "In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance

within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

"If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it."

The executive action here authorized is very mild in its character. It consists merely of the publication of the complaint by an industrial association of employers or workers against a Member, and the statement, if any, in reply to that complaint.

The second provision for executive action is where one of the Members complains that another is not securing effective observations of any convention which both have ratified under Articles 405 and 407. Articles 411 and 415 provide for administrative action by a Commission of Enquiry, which action is partly executive and partly judicial in its character. The action of the Commission in the investigation of the question, is executive. Its action in making its report is quasi-judicial. A similar Commission of Enquiry is provided for in Article 420, to investigate the question of the compliance of a defaulting Government with recommendations of the original Commission of Enquiry, or of the Permanent Court of International Justice, as the case may be.

The general duties of the International Labour Office, the governing body, and the Director, have already been discussed. (*Ante,* Chapter IV.)

The Secretary-General of the League of Nations is also a part of the executive of the Permanent Organization of Labour, under Articles 398, 399 of the Treaty, and his functions in that connection have already been discussed. (*Ante,* Chapter IV.)

CHAPTER VI

THE LEGISLATIVE POWER

I. In the League of Nations.

UNDER Article 1, § 1 of our Constitution it is provided:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

In the Covenant of the League, the term "legislative power" is not used. What legislative power is conferred upon the League must be determined by an analysis of the provisions of the Covenant.[1]

[1] "The next matter to which I desire to call attention is the absence from the Covenant of any adequate provision for the discharge of legislative functions by the League. Ultimately, as it seems to me, the most important work of the League will consist in the laying down, in a legal code, of the principles and rules which are to govern the conduct of States one towards another. I see no means of effectually preventing war except the establishment of the reign of law among nations. Although the stages of evolution may be gradual, I think the League must and will eventually become an organisation in which some appropriate body or bodies will, by majority vote, lay down positive laws to regulate those matters of world concern which give rise to disagreement, friction, and difficulty between nations; laws which will be supported by the public opinion of the world and enforced, in case of need, by coercive machinery provided through the League.

"A code of law to be evolved by the League may be expected ultimately to fall into four divisions as follows:—

"1st. Constitutional law, that is to say, the law regulating the constitution, powers, duties and procedure of the League, and the status of the Member-States as constituent elements of the League.

"2nd. General laws regulating the general relations between States.

"3rd. Special laws regulating the relations between particular States with regard to particular matters.

"4th. General laws regulating relations, not between States, but between individual and individual or between individuals and governments, upon certain matters with regard to which uniformity of law throughout all the leagued States is desirable and attainable. Article 23 indicates some of the principal subject-matters with which laws under this heading might seek to deal. The framing of such general laws would seem a natural outcome of the experience to be gained by the Labour Bureau and other international co-operative institutions, the establishment of which is contemplated by the Covenant and Peace Treaty."

Revision of the League of Nations Covenant, by F. N. Keen, LL.B. 29th Report International Law Association, pp. 113, 114.

"The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat." (Article 2.)

"The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." (Article 3.)

"The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." (Article 4.)

The contrast between these different provisions is striking. Our Constitution uses the term "legislative powers." The Covenant of the League avoids using this clear and definite term, and instead says that the action of the League shall be "effected through" the instrumentality of the Assembly, etc. The members of the League were unwilling to admit in terms that it was a super-state and had legislative power over its members. A slight analogy is found between Congress and the legislative department of the League. Both have two bodies; in Congress, the House of Representatives and the Senate; in the League, the Assembly, and the Council. The Senate and the House of Representatives, however, as separate bodies, compose one legislative body, the Congress. The relationship between the Assembly and the Council is quite different. These two bodies are entirely separate, and their legislative powers are by no means clear.

Power is given to the Assembly and also to the Council "to deal at its meetings with any matter within the sphere of the action of the League or affecting the peace of the world." The power to deal with the subject obviously includes the power to take action in regard to it. This clause refers to two classes of subjects:

First, those "within the sphere of the action of the League." The sphere of action of the League is set forth in the preamble. The objects of the League are "To promote international co-operation and to achieve international peace and

security." These objects are to be obtained by the following means as set forth in the preamble to the Covenant.

1. The acceptance of obligations not to resort to war. The word "acceptance" clearly refers to action by individual Members of the League.

2. The prescription of open, just and honorable relations between nations. The term "prescription" clearly refers to legislative action by the League.

3. The firm establishment of the understandings of international law as the actual rule of conduct among governments. This language is very vague. It is susceptible, however, of the construction that the establishment of such understandings is a matter for legislative action by the League.

4. The maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized people with one another.

The maintenance of justice may call for legislative, judicial and executive action by the League.

The second class of matters with which the Assembly may deal includes any matter "affecting the peace of the world." In view of the lofty objects of the League, this language should be given a broad and liberal construction. The variety of matters which may affect the peace of the world is so great, that it is useless to try to enumerate them. Tariffs, Prohibition, Immigration, Alien Land Holdings, Labour Laws, Control of Natural Resources are matters which may affect the peace of the world. With any such matter the Assembly may deal, and in the absence of any express limitation of its power, may take any action it desires.

It follows, therefore, that if Honduras, for example, is a Member of the League and is not represented at the meeting of the Assembly, the Assembly may declare that the Tariff and immigration laws of Honduras affect the peace of the world, and may repeal those laws. The question as to the probability of such action by the Assembly is another matter. We are now concerned solely with the legal competency of the Assembly.

When we come to the action by the Council, the situation

is still more striking. The Council consists of representatives of only a portion of the members of the League. It is agreed by the members of the League that the Council may take any action in regard to any matter that may affect the peace of the world. That tariffs, for example, do affect the peace of the world is a well known fact. The United States War College has lectures on tariff questions for this reason. It is, therefore, competent for the Members of the League represented at the meeting of the Council not simply to abolish all tariffs of those Members, but also to abolish all tariffs of other Members of the League. What the intention or supposition of the parties signing the contract was regarding this matter is immaterial. It does not require a Marshall, however, to point out that the legislative competence of the League is theoretically unlimited. The limitations on the League's power are not limitations of legislative authority like the constitutional limitations on the power of Congress. The general limitations are of quite a different character; first, the limitation as to procedure, requiring the unanimous vote of the members of the Council; and second, a limitation as to the practical effect of the League's action by reason of the right of withdrawal of any member of the League after two years' notice.

The practical result of the Covenant is one thing; the legal theory of the Covenant is another, and the fact that the legislative competence of the League is so much broader than that of Congress, seems to have been obscured by the emphasis laid on the method of action by unanimous vote and on the power of withdrawal given to Members. Certainly there is no general appreciation of the extraordinary legislative power included in the authority to "deal with any matter affecting the peace of the world."

The only suggestion of any limitation of the power of the League to deal with any matter whatever, is in Article 15 referring to the submission of disputes to the Council. That Article contains the following paragraph:

> "If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter

> which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

The Council under Article 15, however, in making its report, acts in a quasi-judicial capacity. The limitation in that article, therefore, on its jurisdiction in its judicial capacity, is not necessarily a limitation on the power of the Council in its legislative capacity, or on the power of the Assembly in the same capacity. The practical objection may be raised that any attempt on the part of the League to deal with matters regarded as domestic in their character would result in the dissolution of that body by the withdrawal of Members objecting. This practical objection is sound, but on a purely legal question as to whether a motion to deal with such an objection would be declared out of order by the presiding officer of the Council, or of the Assembly, the language of the Covenant does not indicate any clear limitation as to the competence of those bodies to deal with any matters which may be brought before them.

The Covenant of the League, however, is only one part of the Treaty of Versailles, and the Treaty must be read as a whole. Altogether too little attention has been paid to Part XIII, which begins as follows:

> "Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice."

While this is merely a part of the preamble of Part XIII, it cannot be ignored, and it contains an unqualified assertion that social justice is a necessary means of securing the end of universal peace, which is the fundamental object of the League. It is a bold statement, therefore, to assert that the limitation upon the quasi-judicial action of the Council under Article 15 is a limitation on the power of the Council and the Assembly to deal at their meetings with any matter within the sphere of action of the League, or affecting the peace of the world. The maintenance of "justice" referred to in the preamble of the

League Covenant must be understood to include the maintenance of "social justice" under Part XIII. That the maintenance of social justice may include domestic questions is shown by the suggestion of Japan that the immigration laws of the United States constitute a subject proper for the consideration of the League. Claims have also been put forward, though not officially, that the control of national resources is a matter of international concern. The distinction between international and domestic questions, as viewed by the lawyer seeking seventeenth century precedents, and as viewed by the business man seeking trade, or by the statesman seeking an outlet for surplus population or access to national resources, is too important to be left in the obscurity in which the Treaty of Versailles leaves it.

In addition to the general legislative power conferred upon the Assembly, and upon the Council, there are certain specific provisions for legislative action. Article 10 is as follows:

> "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled."

There has been great discussion as to the meaning of this Article. Its apparent meaning is that the Council, as a legislative body, shall determine the means by which the obligation of the Members is to be fulfilled; that it shall communicate its decision to the Members; and that the Members shall obey that decision. In other words, the first sentence of Article 10 creates two primary legal obligations on the part of the Members. The first obligation is to "*respect* the territorial integrity and existing political independence of all Members of the League." This obligation is negative in its character, and calls for no action. The second obligation is to *preserve* such territorial integrity and existing political independence against external aggression. This obligation is positive in its character, and

calls for action by the Members. The specific action to be taken, however, is not defined by the Covenant, but is left to the Council to define. This positive obligation, therefore, as created by the Article is inchoate. Upon action by the Council, the obligation becomes complete. With this Article should be compared the provisions of Article IX of our Articles of Confederation of 1778.

> "The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated 'a Committee of the States,' and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed upon by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should

raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled."

The Articles of Confederation proved entirely inadequate, as is well known. Congress made requisitions on the States, and the States did whatever they chose. The obligation of the States was clear, but there was no means of enforcing it. The obligation of Members of the League to comply with the decision of the Council under Article 10 seems equally clear, although for the enforcement of this obligation no means are provided.

The language of Article 16 is somewhat different in its terms. The Article provides:

"Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

"It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the

> League shall severally contribute to the armed forces to be used to protect the covenants of the League."

In this Article there is no primary obligation on the part of any Member of the League to furnish any armed forces whatever. The action of the Council is purely advisory, and is a mere recommendation. In Article 10, on the other hand, there is a positive inchoate obligation on the part of the Members of the League to preserve, as against external aggression, the territorial integrity and political independence of all Members of the League. The advice of the Council under Article 10 is not a mere recommendation, but is an act making the inchoate obligation definite and complete. The fact that the language is obscure does not do away with the fundamental principle of interpretation, *ut res magis valeat quam pereat.* Article 10 must have been intended to impose some obligation upon the Members, and to define that obligation. As the obligation expressed is not adequately defined by the Covenant, the definition of that obligation is left to the Council, and unless the action of the Council is regarded as defining the obligation in question, that obligation is necessarily void for uncertainty.

Article 11 contains the following provision:

> "Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council."

This Article clearly confers legislative authority upon the League to "take any action that may be deemed wise and effectual to safeguard the peace of nations," in case of "any war or threat of war." This legislative power is given to the League. Under Articles 3 and 4, the legislative power of the Assembly and of the Council is concurrent. Article 11, how-

ever, seems intended to limit the power of action in the case specified, to the Council.

Article 13, providing for the submission of disputes to arbitration, and for the compliance with the award by the Members, contains the following clause:

> "In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

The word "propose" is about as uncertain from a legal standpoint as any term that could be used. A proposal is made to some one, but the Article does not say to whom the proposal is to be made, whether to the Assembly, or to the Members of the League in general, or to the Member whose award has not been complied with by the other Member. Again, a proposal requires acceptance or approval by someone before it takes effect, and there is no reference in the Article to any such acceptance or approval by anyone. The clause is absolutely unintelligible unless the word "propose" is to be construed as equivalent to "decide." If the Council decides what measures shall be taken, it acts in a legislative capacity, determining the sanction for the performance of the Member's obligation to comply with the award. If the Council does not decide, who does decide? The fact that the measures to be taken are to be taken, not by the Council, or by the League, but by the Members themselves, and that the Council has no means of compelling them to take such measures, does not alter the situation. If the Council decides that Members *may* take certain measures against the defaulter, its position is equivalent to a judgment of limited outlawry, as will be seen later in examining the sanctions provided for the enforcement of obligations of Members of the Permanent Organization of Labour. If the Council decides that the Members *shall* take certain measures, this is equivalent to a judgment of execution in which the Members act as the agents or officers of the League in enforcing the obligation of the defaulting Member.

Article 17 provides for inviting States not members of the

League to accept the obligations of membership in the League for the purposes of dispute, and provides that "if both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute." This clause gives the Council general legislative authority in regard to the disputes. The words "may take such measures" are sufficient to include, (1) an order of the Council to the Members of the League to boycott the other States; (2) an order of the Council to the Members of the League to make war on the other States, in the nature of a war to enforce peace.

Under Article 24 the Council has legislative authority to include as part of the expenses of the Secretariat, the expenses of any bureau or commission which is placed under the direction of the League.

II. The Legislative Power in the Permanent Organization of Labour.

The Permanent Organization, being merely a rudimentary political society, has no definite provisions for a legislative body. The constitution of that Organization contains legislative provisions imposing certain obligations on the Members, but for further legislation, either by the Permanent Organization itself, or by the General Conference, there is no express provision. Notwithstanding this fact, legislation by the Organization may take place in one of two ways: First, by the adoption of an amendment to Part XIII of the Treaty under Article 422, just as the legislative provision prohibiting the sale of liquor was written into our Constitution by the Eighteenth Amendment. The second method of legislation is quite peculiar. Under Article 405 the General Conference adopts proposals, or recommendations, or conventions. These proposals have in themselves no legal effect. Article 405 provides that

> "If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member."

When a draft convention, however, proposed by the General Conference under Article 405, is ratified by two or more Members, it is a law of the Permanent Organization that the Members so ratifying shall comply with the terms of the convention. Such convention is not like an ordinary treaty, because the parties cannot abrogate it by mutual consent. An ordinary treaty is analogous to an ordinary contract. A draft convention proposed by the Conference and ratified by the Members is more analogous to the contract of marriage, which is not to be abrogated by the consent of the parties. A draft convention when ratified, can only be superseded by another convention proposed by the Conference and ratified by the Members who ratified the previous draft convention. By the joint action, then, of the General Conference and of the Members ratifying the Treaty, a law of the Permanent Organization is adopted requiring the Members so ratifying to comply with the convention. This law may be amended or repealed by the subsequent proposal of a new draft convention by the General Conference, ratified by the Members ratifying the previous convention.

The more difficult question arises as to the effect of legislative action taken by a Member of the Permanent Organization upon the recommendation of the General Conference. The language of Article 405 is quite obscure. It is provided that,

> "If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member."

If no legislative or other action is taken to make the recommendation effective, no further obligation rests upon the Member. But suppose legislative or other action is taken to make the recommendation effective. What is the result? Can the action so taken be rescinded by the Member which has taken it? There is certainly ground for a claim that the statement that "if no action is taken, no further obligation shall rest on the Member," implies that if any action *is* taken, some further obligation *shall* rest on the Member. Otherwise, we have the important statement that *whether or not* any action is taken, no further obligation shall rest on the Member, which is not what the Article says. If any further obligation does rest on the Member which has taken action, what can that obligation be? The only possible obligation that there can be is to give effect to the legislative or other action so taken. The existence of such an obligation, however, would render the legislation irrepealable except upon the proposal of new recommendations by the Conference. The intention to restrict the legislative powers of the Members is not clearly expressed and cannot readily be implied. The language used, however, permits of the claim that the intention of the Treaty was to adopt the motto *Nulla vestigia retrorsum;* that as a draft convention when ratified creates an irrevocable obligation, so legislative or other action by a Member, upon recommendation by the General Conference, will create a similar irrevocable obligation to maintain the labour standards thus adopted.

It is legislation made part of the constitutional law of the Permanent Organization that Members shall carry out the conventions proposed under Article 405 which they ratify. The action of the Permanent Court may involve an order for specific performance of such convention by a defaulting Member, or an order for the payment of damages on account of such default, or both. The judgment, therefore establishes the default in the performance of a legal obligation of one Member to another. Failure to comply with the decree of the Permanent Court necessarily constitutes contempt of court. The punishment for such contempt is not, however, by means of process issued from the Court, but by the voluntary action

of any other Member who may take against the defaulting Member the measures of an economic character indicated in the decision of the Court as appropriate to the case. If the matter is not referred to the Permanent Court, the decision of the Commission of Enquiry appears to constitute a judgment of a similiar character. The Commission of Enquiry is not called a Court but it seems to be in reality a Court of first instance to which the Permanent Court stands in the relation of an Appellate Tribunal.

While the Permanent Organization at present seems to have only one statutory provision in its Constitution, and that the implied rule that the Members shall observe the conventions proposed by the Conference which they ratify, that statutory provision is of the utmost importance, because the ratification of such convention renders it binding upon the Members ratifying forever. If a member fails to observe the convention so ratified, it may be adjudged in default by the Commission of Enquiry, or by the Permanent Court, and its default may be punished accordingly. No provision is made for the abrogation of the convention, even by the unanimous consent of all the Members ratifying it. It is possible, of course, that if one Member agreed to the abrogation of the treaty by another Member, the Member consenting would be estopped to complain of any subsequent violation of the Treaty by another Member. Take a case, however, where A and B ratify a treaty in January, and their ratifications are registered under Article 406. In July, A and B mutually agree to abrogate this convention. In August C ratifies the convention. Under Article 411, C is entitled to file a complaint against both A and B, for no right of abrogation is reserved to A or B under the Treaty of Versailles. The only method by which A and B can be released from the convention which they have ratified is by the submission of a new international convention drafted by the Conference under Article 405, and the ratification of this new convention by all the Members who ratified the first. The abrogation of such a convention is, therefore, more than the abrogation of a treaty. Such ratification makes the terms of the convention part of the *law of the Permanent Organization,*

binding upon all the Members who ratify such convention, and subject to repeal only by the joint action of the General Conference and of all the Members who have ratified.

Rudimentary as are the present legislative powers of the present Organization, those powers are subject to unlimited enlargement by Article 422 which is as follows:

> "Amendments to this part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members."

This provision for amendments makes such amendments extremely difficult, but it is theoretically possible by such amendments to vest entire control of labour matters in the Permanent Organization.

Little or no attention seems to have been paid to the rules making action by members of the Organization irrevocable under Part XIII. If the United States were to join the League of Nations, it would thereby become a member of the Permanent Organization of Labour. As a member of that organization it is forbidden by the law of the organization to revoke certain action once taken, as above set forth. Under the Constitution of the United States any law enacted by Congress may be repealed, and any treaty entered into by the President and Senate may be abrogated by act of Congress. Such legislative action by Congress, however, while authorized by the Constitution of the United States, would be illegal under the constitution of the Permanent Organization of Labour. This difficulty might be met by an amendment to the United States Constitution, but the difficulty cannot be ignored as matters now stand. The question at present is whether, under our Constitution the freedom of legislative action by Congress can be in any way restricted by treaty. It is to meet such objections that the argument has been made that the provisions in the Treaty of Versailles in Part I and Part XIII are purely con-

tractual, whereas an analysis of both those parts of the Treaty shows that in each case a new political society is created, membership in which constitutes a new national status.

III. The Codification of International Law.

One of the important projects undertaken by the League of Nations is the codification of international law. A code of international law may operate in three different ways. First, it may, by legislative sanction in any particular nation, become part of the municipal law of that nation, just as the Uniform Sales Act has become part of the municipal law in various jurisdictions. Second, the code may be adopted as legislation by a super-government to which the component nations have delegated the power of legislation over their international relations. In that case, the component nations would be affected by the code as the States are now affected by an act of the Congress of the United States. Third, a code may not be a legislative act, but may by treaty become a rule of conduct which the different nations signing such treaty agree to observe. In the first case put, the code, as part of the municipal legislation of a given nation, is subject to amendment or repeal, like any other statute. In the third case put, the code is just as binding as any other treaty, and no more binding than any other treaty. Such a treaty made by the United States is subject to abrogation at any time by act of Congress. Such a treaty made by a nation which desires, and dares, to break it, becomes, like other treaties, a scrap of paper against the nation so daring. In the second case put, however, and only in the second case above put, the code becomes the statute law of the super-government binding the nations which compose that government. Any breach of such a code is a breach of the law of the government which enacts it, and is subject to the sanctions provided by that law.

Applying the foregoing principles to the League of Nations and the Permanent Organization of Labour, the following conclusions result:

1. Neither the League of Nations nor the Permanent Organ-

ization of Labour is given authority to adopt a code of international law.

2. A code prepared by the League of Nations will go into effect, not as a legislative act of the League, but only as a treaty between such powers as may choose to adopt the code.

3. The code will therefore only have the effect of a treaty between the powers signing it.

4. If such a treaty is signed by the United States, Congress may at any time abrogate it so far as the United States is concerned.

5. In so far as any rule is now conceded to be a rule of international law, that is to say, a rule representing the universal practice of nations, such rule can be changed only by unanimous consent. This, at least, is the doctrine laid down by Chief Justice Marshall in "The Antelope," 10 Wheaton, 66., holding that the slave trade had been recognized by the law of nations and could not be prohibited on the high seas except by the consent of the slave traders' own nation. Marshall's decision is the necessary logical conclusion from his premise of the equality of States. In spite of the strenuous insistence on this doctrine of equality as a legal proposition by so many writers, the fact of inequality is so obvious that it is quite conceivable that in the future the Court might say that a rule of international law, or custom, might be changed by the unanimous consent of the great powers without requiring the approval of the smaller powers.

6. No provision is made for the amendment of the code when adopted. A change in the code will require unanimous consent. This is a very serious, if not a fatal, objection to any code. Law of any kind requires constant change to meet human needs. In municipal law constitutions provide for the making of such necessary changes by legislative bodies. The Uniform Sales Act when adopted by the legislature of any State, may be amended the next day or the next year if desired. As the proposed code of international law is not to be adopted by any legislative body, so it is not to be amended by any legislative body, but only by unanimous consent. The effect of such a provision is that, assuming the code to be a

perfect code in its conception, it will become more and more imperfect year by year, while if there are imperfections in it at the beginning, the effect of these imperfections will be more and more seriously felt as time goes on. It may be said, of course, that rules of international law as now recognized are no more subject to change by a legislative body than a code would be, and this is true. The practical difference, however, between a code and the present body of rules, is this: The number of rules that are at present universally recognized without qualification, is very small. No commission for the codification of international law will ever be satisfied with a code containing the minimum number of rules in regard to which there is no dispute. The code, therefore, will necessarily include rules not previously admitted by every one to exist. The code will necessarily, therefore, involve some change in the existing rules of law. The changes may seem at present wholly desirable, but when enacted into a code, such rules become crystallized, like the laws of the Medes and Persians.

7. Codes of international law devote much effort to the regulation of warfare. The practical value of such rules has yet to be demonstrated. The most important of such rules are those intended to make war less cruel, and those intended to protect the rights of neutrals. The history of the last war fails to show that either of these objects can be successfully accomplished by any rules laid down on paper. The law of self-preservation is so much more powerful than any other law, that the means necessary for such self-preservation have been, and will be, utilized by belligerent nations in general without regard to the suffering caused to individuals, or to neutrals, who are unable to defend their so-called rights by force.

8. Codification of international law will have very great advantages if it substitutes a definite statement as to the rules which nations will agree to for the present condition of affairs, where rules are asserted by one nation and denied by another. Whether these advantages are sufficient to outweigh the disadvantages of a rigid and unchangeable code, or whether such disadvantages will be removed by giving the League of Nations legislative authority to change the code, must be a matter of individual opinion.

CHAPTER VII

THE JUDICIAL POWER

I. The Judicial Power in the League of Nations.

A. THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

1. The Origin of the Court.

THE judicial department is not provided for by the Covenant of the League itself, as in the Constitution of the United States. There is a provision in Article 15, "If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration," the Members of the League agree that they will submit the matter to the Council. The Council in such case, however, appears to act as a Board of Conciliation or Arbitration, rather than as a Court.

Article 14 of the Covenant is as follows:

> "The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

Under the authority of this Article, the Assembly of the League on December 13, 1920, adopted a statute for a Permanent Court of International Justice, which was approved by all the Members.

"Article 1. A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organised by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement."

2. The Nature of the Court.

A court is "A body in the government to which the administration of justice is delegated." [1]

The term "court" is often loosely used. Tribunals of arbitration are not true courts, whether they are special tribunals or the Court of Arbitration organized by the Hague Conventions. The Permanent Court of International Justice, however, is not a tribunal of arbitration, but is a true court, because it is a body in the governments of the League of Nations and of the Permanent Organization of Labour to which the administration of justice is delegated by those governments. Being a true court, it administers the law of the two governments of which it is the judicial body.

This rule is not altered by the fact that the Permanent Court may in certain cases adopt a foreign rule of law as the law of the League governing the particular case, just as the Court of Maryland may apply a rule of Virginia law as the law of Maryland in a particular case, under the general doctrines governing the conflict of laws.[2]

"The jurisdiction of courts is a branch of that which is possessed by the nation as an independent sovereign power." [3]

The jurisdiction of the Permanent Court of International Justice accordingly, is a branch of that which is possessed by the League of Nations and the Permanent Organization of Labour as independent sovereign powers. It has frequently been asserted that the Permanent Court is not a judicial branch of the League of Nations, but "an independent judicial body."

[1] Rawle's Third Edition of Bouvier's Law Dictionary.
[2] "The Problem of the International Court To-day," Boston University Law Review, IV, 157.
[3] Marshall, C. J., in Schooner Exchange v. M'Fadden, 7 Cranch. * p. 136.

Such a statement is merely a statement that the Permanent Court is not a court in the legal sense of the term. It is argued that because the Court is independent of the Assembly and the Council, it is independent of the League of Nations; but it might as well be argued that because the Supreme Court of the United States is independent of Congress, it is independent of the United States. The decision of the Supreme Court of the United States in any case is the act of the United States Government through its judicial branch. If a decision of the Permanent Court of International Justice is not an act of the League of Nations, it is not a judicial decision, but the mere expression of an opinion by the members of the Court. The great difficulty with many people is their failure to understand that law and courts have no existence apart from governments. Moral obligations exist without regard to the institutions which enforce them. Legal obligations, on the other hand, result only from the existence of a superior authority, and a court is only the organ by which that superior authority expresses its will in a particular case. The fact that the powers of that superior authority, as in the case of the League of Nations, are very limited, does not prevent the Permanent Court of International Justice from being, what it was intended to be, the judicial organ of that authority; nor does the fact that the compulsory jurisdiction of the Court is limited to cases between those parties who have signed the protocol, prevent the Court from being a true court. The limitation of the jurisdiction of the courts is a feature so common as to be without any other legal consequences. In fact, while the compulsory jurisdiction of the Court under Part I of the Treaty of Versailles is limited to nations signing the protocol, the compulsory jurisdiction which the Court possesses under Part XIII of the Treaty is not so limited. (See *Post,* II, 3.)

3. Organization of the Court.

A. General requirements for the judicial office.

"The Permanent Court of International Justice shall be composed of a body of independent judges, elected re-

gardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law." (Article 2.)

B. NUMBER OF JUDGES.

"The Court shall consist of fifteen members; eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges." (Article 3.)

C. NOMINATIONS OF JUDGES.

"The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

"In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of the Hague of 1907 for the pacific settlement of international disputes." (Article 4.)

(Article 44 of the Hague Convention referred to is as follows:

"Each Contracting Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators.

"The persons thus selected are inscribed, as members of the Court, in a list which shall be notified by the Bureau to all the Contracting Powers.

"Any alteration in the list of Arbitrators is brought

by the Bureau to the knowledge of the Contracting Powers.

"Two or more Powers may agree on the selection in common of one or more Members.

"The same person may be selected by different Powers.

"The Members of the Court are appointed for a term of six years. Their appointments can be renewed.

"In case of the death or retirement of a member of the Court, his place shall be filled in accordance with the method of his appointment. In this case the appointment is made for a fresh period of six years.")

"At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

"No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled." (Article 5.)

"Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law." (Article 6.)

D. ELECTION OF JUDGES.

"The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

"The Secretary-General shall submit this list to the Assembly and to the Council." (Article 7.)

"The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges." (Article 8.)

"At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world." (Article 9.)

"Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

"In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected." (Article 10.)

"If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place." (Article 11.)

"If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

"If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in the list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

"If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from among those candidates who have

obtained votes either in the Assembly or in the Council." (Article 12.)

E. TERM OF OFFICE OF JUDGES.

"The members of the Court shall be elected for nine years.

"They may be re-elected.

"They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun." (Article 13.)

F. FILLING VACANCIES.

"Vacancies which shall occur shall be filled by the same method as that laid down for the election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term." (Article 14.)

G. REMOVAL OF JUDGES.

"A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

"Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

"This notification makes the place vacant." (Article 18.)

H. QUALIFICATION OF JUDGES FOR OFFICE.

"Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously." (Article 20.)

I. RESTRICTION ON ACTIVITIES OF JUDGES.

"The ordinary members of the Court may not exercise any political or administrative function. This pro-

vision does not apply to the deputy-judges except when performing their duties on the Court.

"Any doubt on this point is settled by the decision of the Court." (Article 16.)

"No member of the Court can act as agent, counsel, or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court." (Article 17.)

J. OFFICERS OF THE COURT.

"The Court shall elect its President and Vice-President for three years; they may be re-elected.

"It shall appoint its Registrar.

"The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration." (Article 21.)

"The President and Registrar shall reside at the seat of the Court. . . ." (Article 22.)

4. Seat of the Court.

"The seat of the Court shall be established at The Hague." (Article 22.)

"The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague." (Article 28.)

5. Sessions of the Court.

"A session of the Court shall be held every year. Unless otherwise provided by the rules of the Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

"The President may summon an extraordinary session of the Court whenever necessary." (Article 23.)

6. Procedure of the Court.

A. WHAT JUDGES ARE TO SIT.

(1) *In general:*

"The full Court shall sit except when it is expressly provided otherwise.

"If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

"If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court." (Article 25.)

"Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

"If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

"If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

"Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

"Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24, of this Statute. They shall take part in the decision on an equal footing with their colleagues." (Article 31.)

"If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case he should so inform the President.

"If the President considers that for some special reason

one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

"If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court." (Article 24.)

"Deputy-judges shall be called upon to sit in the order laid down in a list.

"This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age." (Article 15.)

(2) *In Labour cases:*

"Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portion of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

"The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

"If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

"The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two persons nominated by each Member of

the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

"In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings." (Article 26.)

(3) *In Cases relating to Transit and Communications.*

"Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

"The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without right to vote.

"If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

"The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of 'Assessors for Transit and

Communications Cases' composed of two persons nominated by each Member of the League of Nations." (Article 27.)

B. LANGUAGES.

"The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

"In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will at the same time determine which of the two texts shall be considered as authoritative.

"The Court may, at the request of the parties, authorise a language other than French or English to be used." (Article 39.)

C. HOW CASES ARE BROUGHT BEFORE THE COURT.

"Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

"The Registrar shall forthwith communicate the application to all concerned.

"He shall also notify the Members of the League of Nations through the Secretary-General." (Article 40.)

D. PROVISIONAL MEASURES.

"The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

"Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council." (Article 41.)

E. REPRESENTATION OF PARTIES.

"The parties shall be represented by Agents. They may have the assistance of Counsel or Advocates before the Court." (Article 42.)

F. COURT PROCEEDINGS—ORAL AND WRITTEN.

"The procedure shall consist of two parts: written and oral. The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

"These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

"A certified copy of every document produced by one party shall be communicated to the other party.

"The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates." (Article 43.)

G. SERVICE OF NOTICES.

"For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has been served.

"The same provision shall apply whenever steps are to be taken to procure evidence on the spot." (Article 44.)

H. HEARINGS.

"The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside." (Article 45.)

"The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted." (Article 46.)

I. RECORDS.

"Minutes shall be made at each hearing, and signed by the Registrar and the President.

"These minutes shall be the only authentic record." (Article 47.)

J. ORDERS FOR THE CONDUCT OF THE CASE.

"The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence." (Article 48.)

K. DEMAND FOR DOCUMENTS AND EXPLANATIONS.

"The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal." (Article 49.)

L. REFERENCES.

"The Court may, at any time, entrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an enquiry or giving an expert opinion." (Article 50.)

M. EXAMINATION OF WITNESSES AND EXPERTS.

"During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30." (Article 51.)

N. CLOSING OF EVIDENCE.

"After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents." (Article 52.)

O. DEFAULT.

"Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

"The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law." (Article 53.)

P. CLOSING OF HEARING.

"When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed." (Article 54.)

Q. DELIBERATIONS OF THE COURT.

"The Court shall withdraw to consider the judgment.

"The deliberations of the Court shall take place in private and remain secret."

R. DECISION OF QUESTIONS.

"All questions shall be decided by a majority of the judges present at the hearing. In the event of an equality of votes, the President or his deputy shall have a casting vote." (Article 55.)

S. JUDGMENTS.

"The judgment shall state the reasons on which it is based. It shall contain the names of the judges who have taken part in the decision." (Article 56.)

"If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion." (Article 57.)

"The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents." (Article 58.)

T. EFFECT OF JUDGMENTS.

"The decision of the Court has no binding force except between the parties and in respect of that particular case." (Article 59.)

This Article is of great importance. It has often been urged in favour of such a Court that its decisions would build up a body of judicial precedents which would establish international law, as the common law has been established in England and America by judicial precedent, a theory expressly contradicted by Article 59. It must be remembered, however, that the doctrine that judicial precedents are binding, is an Anglo-Saxon doctrine, and the Anglo-Saxon view did not prevail in this statute.

> "The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party." (Article 60.)

As to the limits of this power of construction, see Publications of the Permanent Court of International Justice, Series A. No. 4.

U. REVISION OF JUDGMENTS.

> "An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
>
> "The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
>
> "The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.
>
> "The application for revision must be made at latest within six months of the discovery of the new fact.
>
> "No application for revision may be made after the

lapse of ten years from the date of the sentence." (Article 61.)

V. INTERVENING PARTIES.

"Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

"It will be for the Court to decide upon this request." (Article 62.)

"Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

"Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it." (Article 63.)

W. COSTS.

"Unless otherwise decided by the Court, each party shall bear its own costs." (Article 64.)

X. SUMMARY PROCEDURE.

"With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure." (Article 29.)

"The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure." (Article 30.)

The Chamber of Summary Procedure has acted in the case of a dispute between Bulgaria and Greece as to the jurisdiction of an arbitrator,[4] but has refused to give an interpretation of

[4] Series A, Decision No. 3; Series C, Decision No. 6.

that judgment involving questions outside the judgment itself.[5]

7. Competence of the Court.

A. AS TO PARTIES.

"Only States or Members of the League of Nations can be parties in cases before the Court." (Article 34.)

"The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

"The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

"When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute toward the expenses of the Court." (Article 35.)

B. AS TO SUBJECT-MATTER.

"The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

"The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

"(a) The interpretation of a treaty.

(b) Any question of international law.

(c) The existence of any fact which, if established, would constitute a breach of an international obligation.

[5] Series A, Decision No. 4.

(d) The nature or extent of the reparation to be made for the breach of an international obligation.

"The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." (Article 36.)

"When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal." (Article 37.)

Few judgments of the Permanent Court have been rendered. In the case of *S. S. "Wimbledon,"* [6] the Court took jurisdiction over the controversy as to Article 380 of the Treaty of Versailles, and held that a neutrality order by Germany which would close a canal to a British vessel under a French charter carrying munitions to Danzig for trans-shipment to Poland in a war between Poland and Russia, was in violation of that Article. The applicant powers in that case relied on the express provisions of Article 386 of the Treaty, but the jurisdiction of the Court was not questioned.

The second judgment of the Permanent Court was rendered in the case of *Greece* vs. *Great Britain* [7] where Greence claimed that the government at Palestine, a British mandatory, had wronged a Greek subject, Mavrommatis. Article 26 of this mandate contained the following provision:

"The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice

[6] Publications of the Permanent Court, Series A, No. 1.
[7] Publications of the Permanent Court, Series A, No. 2; see also No. 5.

provided for by Article 14 of the Covenant of the League of Nations."

It was agreed that this mandate came under Article 36 of the Statute in the Permanent Court, and that disputes referred to in Article 26 of the mandate were therefore within the compulsory jurisdiction of the Court, which Great Britain had accepted under that Article.

In addition to its regular judgments, however, the Permanent Court has given certain advisory opinions, so-called, at the request of the Council. While these opinions are called advisory, they are usually declaratory judgments entered by the Court in judicial proceedings to which the Nations in interest are made parties.

In the dispute between France and Great Britain as to the right of France to apply its national decrees issued in Tunis and Morocco to British subjects,[8] the Court gave an opinion that the dispute was not by international law solely a matter of domestic jurisdiction under Article 15, Paragraph 8 of the Covenant. The Court held that while a State possesses exclusive jurisdiction in regard to nationality questions in its own territory, the question whether such jurisdiction extends over protected territory, is a question of international law, and that the existence and construction of treaties are questions of international law also.

In the case of Germany against Poland,[9] the Court gave an advisory opinion that the League of Nations, under the provisions of the Polish Minorities Treaty of June 28, 1919, was competent to deal with Poland's refusal to recognize contracts and leases made by certain German colonists with the German Colonization Commission before the end of the war, upon the ground that such refusal involved an international obligation.

In another advisory opinion involving rights of a Germanic group in Poland,[10] the Court held that the matter was within the competence of the League of Nations. Germany was served with notice in this case and was heard by the Court.

[8] Publications of the Permanent Court, Series B, No. 4.
[9] Publications of the Permanent Court, Series B, No. 6.
[10] Publications of the Permanent Court, Series B, No. 7.

In a case involving the boundary between Poland and Czecho-Slovakia,[11] the Court held that a decision by the Conference of Ambassadors with reference to the boundary between the two States which they had accepted as final, the Conference of Ambassadors had no power either to interpret or revise its award.

In another advisory opinion the Court held that a decision of the Conference of Ambassadors with respect to the frontier between Albania and Jugo-Slavia [12] had exhausted the mission which was contemplated by a resolution of the League.

The Court in an advisory opinion has construed the word "established" in Article 2 of the Convention of Lausanne of January 30, 1923, regarding the exchange in Greek and Turkish populations,[13] as including Greek inhabitants residing within certain boundaries of the prefecture of the City of Constantinople who arrived there prior to October 30, 1918, with the intention to reside there for an extended period.

In view of the fact that these advisory opinions were rendered by the Court only upon hearing of the interested parties, they are in reality not mere opinions for the advice of the Council which requests them, but declaratory judgments binding on the parties who are before the Court. (See *Post,* Part III of this Chapter.)

8. What Law Governs in the Permanent Court.

"The Court shall apply:

"1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

"2. International custom, as evidence of a general practise accepted as law:

"3. The general principles of law recognised by civilised nations;

"4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified

[11] Publications of the Permanent Court, Series B, No. 8.
[12] Publications of the Permanent Court, Series B, No. 9.
[13] Publications of the Permanent Court, Series B, No. 10.

publicists of the various nations, as subsidiary means for the determination of rules of law.

"This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono,* if the parties agree thereto." (Article 38.)

As has already been stated, the Permanent Court is the court of the League of Nations. It is, therefore, bound to apply the law of the League of Nations in cases coming before it. The present law of the League of Nations governing such cases is set forth in Article 38 of the statute above quoted. This statute was approved by the Assembly of the League of Nations December 13, 1920. The statute itself did not bring the Court into existence, but was the basis of a treaty supplemental to the Treaty of Versailles, and ratified by the powers represented in the League. The jurisdiction of the Court rests partly on the statute, or supplemental treaty, and partly on the Treaty of Versailles itself. Thus, for example, the jurisdiction of the Court to render advisory opinions, which the Court has construed as meaning to render declaratory judgments, does not rest upon the statute, but upon Article 14 of the Covenant of the League of Nations. Article 38 of the statute declaring what law shall be applied by the Court is, of course, subject to amendment by the unanimous consent of the parties who signed the treaty embodying the statute.

The statute states four classes of rules which are to be applied by the Court. It wholly fails to state whether these rules are of equal force, or whether a given rule is to be applied only in case no rule governing the matter is to be found in the preceding class, or classes, of rules. It seems reasonable, however, to hold that the four classes of rules mentioned belong in the order in which they are enumerated, and if the Court finds a rule in the first class governing the case, they need not inquire as to the rules in the other classes.

The fourth clause of Article 38 is curiously obscure. This clause is as follows:

"Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified

publicists of the various nations, as subsidiary means for the determination of rules of law."

Now Article 59 is as follows:

"The decision of the Court has no binding force except between the parties and in respect of that particular case."

Taking Clause 4 of Article 38 together with Article 59, it would probably be held that all judicial decisions may be considered, but that the Court is not bound to follow any of them, even its own.

The last clause of Article 38 is extremely obscure. It reads as follows:

"This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono,* if the parties agree thereto."

The meaning of this is that the parties may agree that the Court shall not decide cases in accordance with any of the rules of law stated in the preceding four clauses, but *ex aequo et bono* that is, in justice and good dealing. The implication is that there is a rule of decision which a court of justice may consider, entirely distinct from "the general principles of law recognised by civilised nations." What such rules of justice are, where they are to be found, and how they are to be applied to the Court, is not stated, and it is not clear whether this clause was intended to give the Court, with the consent of the parties, power to act as a tribunal of arbitration without regard to law. Thus, for example, if the United States should bring suit against France in the Permanent Court for the debt due from France, and the parties should leave the matter entirely to the Court, it seems uncertain whether the Court would consider the French claim that the money lent to France by the United States was expended by France in an enterprise for the benefit of all the allies.

9. Expenses of the Court.

"The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.[14]

"The President shall receive a special grant for his period of office to be fixed in the same way.

"The Vice-President, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

"Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

"Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

"The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

"The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court." (Article 32.)

"The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council." (Article 33.)

B. THE JUDICIAL FUNCTIONS OF THE COUNCIL.

The judicial power of the League is principally vested in the Permanent Court of International Justice. Certain powers of a quasi-judicial character, however, are conferred upon the Council and upon the Assembly. Article 12 of the Covenant is as follows:

[14] The judge is protected against a decrease by the action of the League, but not against a decrease caused by an income tax law of his own country.

> "The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report of the Council. In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

The phraseology of this Article is vague. It is not clear whether the Council has discretion to do whatever it chooses in regard to the matter, or whether its inquiry or report should be of a judicial character.

Again, in Article 13,

> "The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

It is not clear whether the Council is to act judicially in this matter, or not. Under Article 418 of the Treaty, dealing with the Permanent Organization of Labour, the Permanent Court is to indicate measures of an economic character which it considers to be appropriate, and which other governments would be justified in adopting against a defaulting government. The determination of what sanction should be applied for the default is here treated as a judicial matter. Under Article 13 of the Covenant it seems that the action of the Council may be either executive or judicial.

Under Article 15 of the Covenant, the Council has jurisdiction to determine whether a dispute arises out of a matter which by international law is solely within the domestic jurisdiction of one of the parties.

In the important case of the Theunis-Morocco Nationality question,[15] the Council did not attempt to decide whether the dispute was solely a matter of domestic jurisdiction, but by agreement of the parties, referred the question to the Permanent Court of International Justice for an advisory opinion, which resulted in a settlement of the case.

In any case referred to the Assembly by the Council, all the provisions of Article 15 and Article 12 of the Covenant relating to the action and powers of the Council, apply to the action and powers of the Assembly, except as to the method of voting. (Article 15.)

The Council also exercises a judicial power under the last paragraph of Article 16 of the Covenant:

> "Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon."

The determination of the fact of violation of a covenant by a defaulting Member, and the expulsion of that Member as a penaly for such violation, are acts judicial, or quasi-judicial, in their character.

C. THE JUDICIAL FUNCTIONS OF THE ASSEMBLY.

The failure of the League Covenant to make any clear separation between the executive, legislative and judicial powers, raises difficult constitutional questions. Thus, for example, the interpretation of our Constitution is a judicial matter, and such interpretation is settled by the decisions of the Supreme Court of the United States. Interpretation is essentially a judicial function. In the League of Nations, however, the Assembly has undertaken to interpret the Covenant. Thus, a resolution was offered in the Assembly interpreting the

[15] Publications of the Permanent Court, Series B, No. 4.

famous Article 10 as imposing no legal obligation on any Member to comply with the decision of the Council. This so-called interpretation was in reality an amendment of the Covenant, and was intended to take the place of a proposed amendment. The object of both the interpretation and the amendment were to meet the objections raised by the United States to Article 10.[16] The resolution received a majority vote, but was defeated, the chair ruling that a unanimous vote was necessary to adopt a resolution interpreting the Covenant. Whether the Permanent Court is bound by an interpretation of a covenant by the Assembly, or whether the Assembly is bound by an interpretation of the Covenant by the Court, remains to be seen. On general principles of law it would appear:

1. That the Assembly has no power to interpret the Covenant.

2. That the Permanent Court of International Justice has such power.

3. That the interpretation by the Permanent Court has no binding force except between the parties in respect of a particular case submitted to the Court for decision.

As to the first proposition that the Assembly has no power to interpret the Covenant, it should be noticed:

1. That no such express power is given to the Assembly.

2. That while very broad powers are given to the Assembly by Article 3 to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world," such powers must, obviously, be exercised only in accordance with the other terms of the Covenant. The Assembly has no power whatever to amend the Covenant. An interpretation of the Covenant by the Assembly, therefore, is merely an expression of the opinion of the Assembly. Such interpretation cannot alter the terms of the Covenant as written, otherwise the power to interpret would be equivalent to the power to amend.

3. That the jurisdiction of the Assembly is one thing, and the requirement of other than a majority vote is quite another.

4. That a representative legislative body such as the As-

[16] James Brown Scott, Am. Jour. of Int. Law, Vol. 18, pp. 108-113.

sembly cannot by its own act enlarge the powers conferred upon it by the Constitution under which it is organized.

As to the second proposition that the Permanent Court of International Justice has power to interpret the Covenant, the power of interpretation of a document is necessarily vested in any Court when the interpretation of that document is one of the issues in a case before the Court. The Court has, not simply the power, but the duty, of interpreting the Covenant whenever the interpretation of the Covenant is involved in a case brought before it. By Article 14 of the Covenant, "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

As to the third proposition, it must be noticed that the effect of an interpretation by the Permanent Court of the League Covenant is very different from that of an interpretation of the United States Constitution by the United States Supreme Court. A decision of the United States Supreme Court as to the interpretation of the Constitution is binding upon everyone. Such a decision establishes a rule of constitutional law. An interpretation of the League Covenant by the Permanent Court of International Justice has no such effect. If the interpretation is given in an advisory opinion to the Council or to the Assembly under Article 14, the opinion is merely advisory, and is not binding on the Council or on the Assembly, though it seems binding on the parties in court. On the other hand, if the interpretation is given in the decision of a case brought before the Court, then, by Article 59 of the Statute, "the decision of the Court has no binding force except between the parties and in respect of that particular case."

II. The Judicial Power in the Permanent Organization of Labour.

1. The Council of the League of Nations.

By Article 393, any question as to which of the Members are of the chief industrial importance, shall be decided by the

Council of the League of Nations. Such a decision appears to be of a judicial character.

2. Commissions of Inquiry.

The Permanent Organization has no definite judicial department of its own. The Commissions of Enquiry, provided for in Articles 411 to 415 and in Article 420, are administrative bodies which act partly in an executive and partly in a quasi-judicial capacity. Investigation by the Commission is executive in its nature. The report of the Commission is quasi-judicial. Such report is similar in its character to a decree of the Permanent Court of International Justice to which the matter may be referred by the Member who is dissatisfied with that report. Such report finds the facts, decides what steps should be taken to meet the complaint, and the time in which they should be taken, and indicates the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting. The report, therefore, follows exactly along the lines of the judicial decree which the Permanent Court may enter under Article 418.

3. The Permanent Court of International Justice.

While the Permanent Organization has no judicial department of its own, it borrows that of the League of Nations, the membership of the two organizations being assumed by the Treaty to be identical. There is this noticeable difference between the Covenant of the League of Nations and Part XIII of the Treaty providing for the Permanent Organization of Labour. In the Covenant of the League the judicial settlement of disputes, with the exception of the cases provided for in Article 36 of the statute of the Permanent Court, and even as to those cases only as to those nations which accept the protocol for compulsory jurisdiction, is recognized as only one method of settling disputes, arbitration and submission

to the Council of the League being alternative methods of settlement; whereas, under Part XIII of the Treaty there is no reference to arbitration, and the only provision for the settlement of disputes with reference to the Permanent Organization of Labour is by reference to the Permanent Court. The procedure of the Court in labor cases is set forth in Article 26 of the statute of the Permanent Court:

> "Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portion of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:
>
> "The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.
>
> "If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.
>
> "The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of 'Assessors for Labour cases' composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of

employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

"In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings."

It is interesting to note in this connection that the technical assessors provided for are to be selected from the list of assessors for labour cases, half of whom are nominated by the Governing Body of the Labour Office. The Governing Body of the Labour Office is not an organ of the League of Nations, but of the Permanent Organization of Labour. We have, therefore, a curious situation of the dependence of the Court upon the action of an organization over which neither it, nor the League of Nations which created it, has any control. It is assumed that the membership of the League and the Permanent Organization will always be identical, and that this identity of membership will be sufficient to insure the efficient co-operation of the two organizations in every particular; assumptions which will ordinarily hold good, but which do not entirely eliminate the possibility of some awkward situations.

"The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague." (Statute, Article 28.)

Statute, Article 29, is as follows:

"With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure."

This article apparently includes labour cases as well as others.

Reference of disputes to the Permanent Court:

"Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent

convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice." (Article 423.)

It must be noted that this Article refers only to questions or disputes relating to the interpretation of Part XIII, or of any subsequent convention concluded by the Members in pursuance of Part XIII. It should be noticed, however, that under this Article the Permanent Court has compulsory jurisdiction over *all* Members in regard to this particular class of disputes, whereas the compulsory jurisdiction of the Court in general is limited to those Members who sign the protocol. As to the power of the Court, when jurisdiction under Article 423 is once secured, to decide upon the case as a whole, see *Post,* Chapter VIII, Part III, I, A, (14).

Articles 408 to 415 of the Treaty provide for the reports and complaints with reference to the observance of the provisions of conventions adopted by the Members.

The last clause of Article 415 shows that the Permanent Court has jurisdiction of a complaint by one Member of the League against another Member on the ground that the other Member is not securing the effective observance of any conventions which both have ratified in accordance with the foregoing Articles. It is apparently intended that before any such complaint is referred to the Court, the following steps shall be taken:

(1) The complaint shall be filed with the International Labour Office under Article 411;

(2) The Governing Body is to apply for the appointment of a Commission of Inquiry under Article 412, to consider the complaint and to report thereon;

(3) The Commission of Inquiry is to prepare a report, embodying its findings on all questions of effect relevant to determining the issues between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken;

(4) The Secretary-General of the League of Nations is to communicate this report to each of the Governments concerned in the complaint, and of course, it is to be published;

(5) Each of these Governments shall, within one month, inform the Secretary-General whether or not it accepts the recommendations contained in the report, and if not, whether it proposes to refer the complaint to the Permanent Court.

These provisions are obscure in various particulars:

(1) It is not stated whether the words "within one month" in Article 415 refers to the date of the issue of the communication by the Secretary-General, or to the date of the receipt of such communication by the Member. The natural inference, however, is that the "one month" refers to the date of the receipt of the communication;

(2) No time limit is fixed within which the dissenting Member is to refer the complaint to the Permanent Court.

Suppose that a Member informs the Secretary-General that it proposes to refer the complaint to the Permanent Court and does not do so within one year, for example. The statement of a proposal to refer is merely the statement of an intention; it is not in itself a reference to the Court, and does not give the Court any jurisdiction to proceed in the matter; nor is there any provision as to the effect of the failure of the Member through negligence, or otherwise, to carry out its proposal by an actual reference to the Court.

It is difficult to read provisions into a Treaty by construction, yet one must look at the apparent intention of the whole document. The intention was to give the Permanent Court jurisdiction in case of such disputes. There are two possible interpretations, therefore, of Article 415; one, that the dissenting Member which fails to make good its proposal to refer its complaint to the Court thereby abandons its dissent and accepts the report; the other, that the other party may bring the matter before that Court for final settlement. The first interpretation seems the more reasonable of the two.

III. The "Advisory" Function of the Permanent Court of International Justice.

Article 14 of the Covenant of the League of Nations provides that

> "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

Under the American system of the separation of executive and legislative powers, it is well established that in the absence of express authority in the particular constitution under which the court is organized, the court will not give advisory opinions either to the executive or to the legislature. In certain American jurisdictions, however, express authority to render such opinions is conferred upon the Supreme Court of the State. The function of giving such opinions is not regarded, therefore, in the United States as a judicial function in the strict definition of that term. The fact that the absolute separation of powers is not maintained in certain jurisdictions does not alter the nature of the power exercised. The Court in giving such an opinion acts merely in the capacity of counsel.

Article 14 confers power upon the Permanent Court to render advisory opinions, but does not make the giving of such opinions compulsory. Accordingly, in the matter of the dispute between Finland and Russia relating to the Dorpat Treaty, the Court declined to comply with the request of the Council for an advisory opinion in regard to the dispute, and laid down the rule that where an advisory opinion on the legal effect of treaty provisions would involve a prejudging of a dispute with reference to the execution of such treaty provisions, the Court will not give such an advisory opinion unless both parties submit to the Court's jurisdiction. Four of the judges, however, disagreed with the majority of the Court on this point.[17] In commenting on this case, Professor Manley O. Hudson says:

[17] Reported in Publications of the Permanent Court of International Justice, Series B, No. 1.

> "This refusal is a clear indication of the judges' determination that the limitations surrounding judicial action are to be rigidly observed, even in the exercise of their function of giving advisory opinions." [18]

An examination of the other advisory opinions of the Court, however, indicates the confusion of thought between the notion of the advisory opinion and the notion of a declaratory judgment. In the cases where the Court has rendered a so-called advisory opinion affecting different parties, the opinion has been given after notice to the parties interested and argument by the parties before the Court. Such opinions, therefore, are in the nature of declaratory judgments complying with the judicial requisites of notice and hearing. An advisory opinion, on the other hand, as understood in American constitutions, is purely an *ex parte* matter in which the Court merely gives its opinion as counsel to the executive or to the legislature. The language of the Treaty as to the power of the Court is clear. Article 14 provides "that the Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it." This sentence provides for the judicial function of the Court. The next sentence is:

> "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

The French text is even clearer:

> "Elle donnera aussi des avis consultatifs sur tout différent ou tout point, dont la saisira le Conseil ou l'Assemblée."

The French text says, after providing for the judicial function of the Court, that it *will* give also advisory opinions. The English text reduces "will" to "may," and the Court itself

[18] American Bar Association Journal, Vol. 10, p. 195.

refuses to give *ex parte* advice, although nothing could be clearer than the fact that Article 14 regards the giving of such *ex parte* advice as one of the functions of the Court. The Court itself says:

> "The Court, being a court of justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a court."

This decision seems to proceed upon the theory that because the body in question is called a court, it can only exercise its functions in a judicial manner. Such a rule is entirely proper under an American constitution which provides for the separation of powers, but not all American constitutions exact the rigid separation of powers. Thus, for example, the Constitution of Massachusetts, Chapter 3, Article 2 provides:

> "Each branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the supreme judicial court, upon important questions of law, and upon solemn occasions."

In view of the well-known American influence exercised in the framing of the League Covenant, and in view of the clear language of Article 14, it is interesting to note the strict construction by which the Permanent Court limits its own powers.

The Permanent Court of International Justice seems to divide its advisory function into two separate functions. In certain matters relating to the organization and procedure of the League of Nations and the Permanent Organization of Labour, the Court appears to give its opinion in an executive capacity as the legal adviser of the organizations.

(See Opinions Nos. 1, 2 and 3.)

On the other hand, in cases where the advisory opinion involves the pre-judging of a dispute between different nations the Court has refused to give such an advisory opinion unless both parties submit to the Court's jurisdiction.

IV. The Relation of the United States to the World Court.

Many people have expressed a desire that the United States should "join" or "participate in" the Permanent Court of International Justice, without becoming a member of the League of Nations. The legal situation here involved is not, as a rule, clearly understood.

It is legally possible for the United States, with the consent of the League of Nations, to participate in the selection and management of the Permanent Court, but it is legally impossible for that court, however constituted, with the United States participating or not, to administer any other law than that of the League of Nations or the Organization of Labour, including such foreign rules of law as the League or the Organization may adopt for the decision of particular cases.[19]

Professor Manley O. Hudson denies that the Permanent Court is a League court, in the American Bar Association Journal of January, 1924, but his argument that the Court is not a League court, is in reality an argument that the Permanent Court is not a true court.

Much of the confusion in regard to the Permanent Court arises from disregard of the definition of a court. A court is "a body in the government to which the administration of justice is delegated." [20]

The Permanent Court is the body in the League of Nations and in the Permanent Organization of Labour to which the administration of justice is delegated by those two organizations.

The Permanent Court was created by a statute approved by the Assembly of the League of Nations and accepted by the members of the League in accordance with the provisions of Part I and Part XIII of the Treaty of Versailles.

The powers of the Court can only be determined by reading Parts I and XIII of the Treaty in connection with the statute.

[19] "The Problem of the International Court To-day," Boston University Law Review, IV, 157.

[20] Rawle's Third Edition of Bouvier's Law Dictionary.

The Court is independent of the Council and Assembly of the League, but it is not independent of the League itself.

The law which the Court administers is the law of the League of Nations, or of the Organization of Labour.

The judgment of the Court is the judicial action of the League of Nations, or of the Organization of Labour, just as the judgment of the Supreme Court of the United States is the judicial action of the United States.

The statute of the Court as the judicial body of the League of Nations and the Organization of Labour would not be altered, (1) by an arrangement under which the United States should participate in the election of judges; (2) by a contribution of the United States to the support of the Court.

The United States at the present time may sue in the Permanent Court as now constituted, or may be sued, with its consent, by another State. In such cases the Court will fix the amount which the United States is to contribute toward the expenses of the Court. (Statute, Article 35.)

There is no possibility of having a true international court which is not the judicial body of an international government, such as the League of Nations. The United States has the following choices, and only the following choices in regard to the situation:

1. The United States may decline to have anything to do with the Permanent Court.

2. The United States may utilize the Permanent Court, as now constituted, in particular cases for the settlement of international disputes, paying towards the expenses of the Court an amount to be fixed by the Court in each case.

3. The United States may contribute regularly to the support of the Court from motives of international benevolence.

4. The United States may, without joining the League of Nations, take part in the election of judges of the Permanent Court under an arrangement to which the members of the League all agree. In such cases the judges elected by the United States will be officers, not of the United States, but of the League of Nations. Under Article 2 of the Statute, the judges are to be independent—that is to say, their action

is not to be subject to any control, and they are to administer the law of the Government, not to which they belong, or by which they have been elected, but of the Government to which the Court belongs, that is, the League of Nations. There is a common assumption that if judges of the Permanent Court were elected by the United States, such judges in some way would represent the United States. This assumption is without foundation. The duty which a judge owes is not to the persons who select him, nor to the locality from which he comes, but to the Government under which he is sworn to administer justice. (Statute, Article 20.) While it is possible for the United States to participate in the support of the Court and in the election of judges without becoming a member of the League of Nations, the phrase "Joining the Court" is quite misleading. Joining the League of Nations has a perfectly definite meaning. Joining the League is becoming a member of the organization. Members of the League, however, are not members of the Permanent Court. The members of that Court are the judges who compose it, and not the members of the League who elect them. A judge when elected joins the Court. The nation which elects him does not join the Court. The only body which the United States can join is the League, and not the Court itself. If an arrangement is made by which the United States is permitted to elect judges of the Court without joining the League, the legal effect of that arrangement is that the United States, at the request of the League, selects a judge for the Court of the League. It is an unusual legal situation to have a judge of the Court selected by anyone but a member of the government to which that Court belongs, but such legal situation is by no means impossible. The character and the competence of the Court are in no way altered by such change in the method of selecting judges.

It is an absolute impossibility to detach the Permanent Court of International Justice from the League of Nations by any arrangement whatever, without changing the present character of the court. It is a legal impossibility to have any true international court which shall not be a court of the

League of Nations, for the simple reason that there is no other international government which can entrust such a body with the administration of justice.

The one alternative to the present Court of the League of Nations involves serious difficulties. That alternative is:

1. The abolition in fact, though not in name, of the present Court.

2. A new treaty among all the nations, creating a new tribunal with no reference to the Treaty of Versailles. Such tribunal would not be a true court, because it would not represent any Government. It would simply be a body like the present Hague Tribunal, known as The Permanent Court of Arbitration, but with a different organization and procedure.

3. A further treaty signed by all the parties to the Treaty of Versailles, substituting such new tribunal for the Permanent Court of International Justice provided for in the Treaty of Versailles and other treaties and now existing.

The proposed American acceptance of the Permanent Court with reservations requires the action by other nations above stated, if such reservations are to be given the proposed effect of excluding legal relations between the United States and the League.

It is not intended by the foregoing analysis to argue that the United States should, or should not, connect itself in any way with the Permanent Court of International Justice. Before deciding what should be done, it is absolutely essential to understand what can be done, from a legal standpoint. Only on the basis of a clear understanding of the legal situation can the questions of policy involved be adequately discussed.

There has been considerable discussion with reference to the effect of the advisory opinions of the Permanent Court so far as the United States is concerned. Under a liberal interpretation of Article 14 of the Covenant, the function of the Court in rendering an advisory opinion is executive, and the Court is to act as the legal adviser of the League. Under the very narrow interpretation placed upon this article by the Court itself, the so-called advisory function of the Court

is, in cases involving disputes between the Members, turned into a judicial function for the purpose of rendering declaratory judgments as to the rights of the parties who submit to the Court's jurisdiction. (*Ante,* Chapter VII, Part III). If the Court adheres to its present rule of rendering advisory opinions only when the interested parties submit to the jurisdiction of the Court, no opinion will be rendered against the United States unless the United States submits to the Court's jurisdiction. On the other hand, if the Court should change its view and consent to act as the legal adviser of the League in accordance with the terms of Article 14 of the Covenant, the advisory opinion rendered by the Court under such circumstances would simply be the action of the League's legal adviser. Such opinion is not made binding on the League itself by anything in the Covenant or the Statute; still less could it be regarded as binding in any way on the United States while not a member of the League, merely because the United States participated in the support of the League Court, or in the selection of its judges.

The moral effect, however, of an opinion not legally binding would be very great as against any nation participating in the support or management of the Court.

The frequent use of the word "court" in a popular, rather than a legal, sense, has led to a curious error in regard to the Permanent Court of International Justice, both on the part of the advocates of the League of Nations, and on that of the opponents of the League. The opponents of the League object to the Court because it is a League court. Certain advocates of the League, apparently recognizing this as a valid objection, meet the objection by denying that the Permanent Court is a League court. Certain opponents of the League admit their willingness to participate in a "world court" which shall not be a League court. The fundamental error in the whole controversy arises from the varying uses of the word "court." In the legal sense of the term persons who oppose a League court are opposed to any real court. They desire that controversies should be settled by an impartial body of jurists. Friends of the League assert that the Permanent

Court is an impartial body of jurists—but an impartial body of jurists is not a court, but a mere tribunal of arbitration. A court is a body in a Government which administers justice in accordance with the law of that Government. The judges are officers of the Government, and it is only because they are officers of the Government that their decisions have any force. If the judges of the Permanent Court are not officers of the League of Nations, they are not officers of any Government, and the Court is not an organ of any Government. It seems reasonably clear that the Permanent Court is the judicial body of the League of Nations, and is a true court, and that its judges, however elected, are officers of the League of Nations. Persons who object to the Court on this ground, and demand a court independent of the League, are really objecting to any true international court, because a court without a Government is a legal impossibility. A body of impartial jurists who are not officers of any government constitutes nothing but a tribunal of arbitration, and its decisions, instead of representing an authority superior to that of the litigants before it, to which they must submit, would be only the award of arbitrators under a voluntary submission by the parties of the particular controversy.

The practical questions involved affecting the policy of the United States go far beyond the mere legal questions as to the nature of the Permanent Court; but these practical questions cannot properly be decided without a clear understanding of the legal situation.

CHAPTER VIII

THE OBLIGATIONS OF MEMBERS

I. In General.

THE Treaty of Versailles creates numerous obligations of the parties, some of which are imposed on them as members of the League of Nations, and others as members of the Organization of Labour. Some of these obligations are positive, and some negative; some are legal, and some simply moral. Before this treaty all international obligations were simply moral. No matter how definitely those obligations were expressed in a treaty, the treaty was, after all, from a legal standpoint, merely a "scrap of paper." [1] The sanction of the treaty was only the honor of the party bound, or the fear of the superior strength of the other party. The Treaty of Versailles, unlike all other treaties, creates *legal* obligations between the contracting parties, not because those obligations in themselves differ so extraordinarily from many other treaty obligations, but because this treaty involves, not merely the promises of the parties, but the creation of two new political societies, which, however rudimentary and however unstable, are, nevertheless, societies superior in authority to the parties composing them. These new societies have little legislative power, and few rules of law governing their members, but there is one fundamental rule of law, in both societies, to wit, that the members of the society are *legally* bound to perform the promises made by them in the treaty, when those promises are sufficiently definite to have a legal character. For the first time we have international obligations which are legal, because

[1] The indignation displayed on moral grounds at the use of this phrase by Chancellor von Bethmann-Hollweg does not affect the legal accuracy of the phrase.

for the first time we have an international government. Without a government superior to the parties governed, there can be no law, in the legal sense of the word.[2] The establishment of this international government by the Treaty, makes the relations between the members of the League of Nations legal relations, and obligations assumed by them under the Treaty, legal obligations.

Some of the obligations assumed under the Treaty constitute international servitudes; others are merely contract obligations. The technical distinction, however, seems of little practical importance.

II. Obligations of Members of the League of Nations.

1. Legal Obligations.

A. positive obligations.

(1) *To pay expenses.*

No express authority is conferred upon the League to raise any money. Whether the power given to the Assembly under Article 3, and to the Council under Article 4, "to deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world," includes the power to assess the Members, is uncertain. The only provisions regarding money are those in Article 6, "The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union," and Article 24, "The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League." The Statute of the Permanent Court contains the further provision in regard to the expenses of the Court: "The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council." (Statute, Article 33.)

[2] See "The Price of International Law," Virginia Law, Rev., X, 495.

(2) *To protect other members of the League.*

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled." (Article 10.)

The obligation imposed by Article 10 is, (a) to respect and preserve: (b) as against territorial aggression; (c) the territorial integrity and existing political independence of all members of the League.

"To Respect and Preserve."

The obligation to respect is negative. The obligation to preserve is positive. A member of the League may be threatened, either by another Member, or by a non-member of the League. Any such threat by a Member of the League against the territorial integrity or existing political independence of another Member, is a violation of the undertaking to respect. The obligation to preserve the territorial integrity and existing political independence of all the Members of the League applies whether a threat is made by a Member of the League or by a non-member. Both the obligation to respect and the obligation to preserve, rest upon the fundamental principle of the Treaty, that the territorial integrity and political independence of all Members of the League represent the final determination as to the status of legal relations between those Members. By this Treaty all "places in the sun" now occupied by Members of the League are guaranteed to their occupants.

"Against External Aggression."

There is no guaranty to protect any Member against revolution or secession. In a situation like that caused by the American revolution, no Member of the League would be

bound by this article to assist the mother country in preventing the secession of the colonies. On the other hand, the covenant to preserve against external aggression the territorial integrity of all members of the League, would require the other Members to intervene to prevent any assistance being given to the revolutionists by a third country, as when France assisted the American colonies against England, or when the United States assisted Panama to secede from Colombia. If the Member of the League is itself the aggressor against a non-member, and is defeated, this covenant does not appear to protect the defeated Member against the consequence of a loss of territory or political independence.

"The Territorial Integrity."

This phrase obviously relates to the date of the Treaty. It is broad enough to include, not simply the preservation of existing boundaries, but also the prevention of the imposition of any positive international servitude.

"The Existing Political Independence."

This phrase relates to the date of the Treaty. What is the existing political independence of the Members, is not defined. Article 21 is as follows:

> "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace."

Article 10, therefore, is not to *affect* the validity of the Monroe doctrine. Now, the Monroe doctrine is the assertion by the United States of a right in the nature of a servitude against all countries in the Western hemisphere to prevent their dealing with their territory in a manner which the United States regards as injurious to its own interests; that is, for example, by ceding such territory to a European or an Asiatic power. It is also an assertion of a claim of the United States to forbid any seizure of territory in this hemisphere by a

European or an Asiatic power. We are not here attempting to define the Monroe doctrine, or the limits of its extension by subsequent claims of the United States. The general nature of the doctrine is above stated. The assertion by the United States of the Monroe doctrine, however, does not give "validity to such doctrine." Such validity can only be obtained by acquiescence in the doctrine by those States against whom it is asserted. Suppose, then, that a South American State, which is a Member of the League, desires to cede a coaling station to Japan, which is also a Member of the League. Is the assertion by the United States of the Monroe doctrine to prevent such cession an attack on the political independence of the ceding country? Such intervention is a denial of the complete political independence of the South American country, and Article 10 would necessarily apply, unless it should be held that Article 21 recognizes the Monroe doctrine, which is not defined, as an existing limitation of the independence of such South American country. Nothing in Article 21, however, in any way guarantees the Monroe doctrine, or asserts its validity. The article is purely negative. The sanction for this obligation will be considered later.

This article has been the subject of much discussion, and furnished one of the reasons for the rejection of the Treaty by the United States. The obligation is as clear and positive as the means by which the obligation is to be fulfilled are indefinite. This is one of the instances in the Treaty where, as the result of the struggle between the nationalists and the internationalists, the latter secured the adoption of a very broad rule of conduct, and the former prevented the adoption of any clear provision for the enforcement of that rule.

It is true that a majority of the Assembly have placed a different interpretation on Article 10, and have voted that that article creates no legal obligation on the part of any Member to comply with the decision of the Council. Such interpretation, so called, is in reality an amendment of Article 10, and was proposed in the Assembly in place of a proposed amendment. Both the interpretation and the amendment were intended to meet the objections which the United States had raised to

Article 10, upon the ground that that article did impose an obligation on the Members. The attempted interpretation, therefore, has no legal effect, but only the moral effect of a repudiation of the clear language of the Covenant by a majority of the Assembly. The intention of the framers of the Covenant was to put some teeth in Article 10. The proposed interpretation of that article by the Assembly was merely a declaration that those teeth are false.

The resolution making such interpretation received only a majority vote, and was therefore defeated, the chair holding that a unanimous vote was necessary.[3]

> "The meaning of this article was the subject of long and profound discussion by the Institute of International Law. Its interpretation was adopted at the meetings of the 9th and 10th of August, and the following is an English translation of the French text:
>
> *Resolutions concerning Article 10 of the Covenant of the League of Nations.*
>
> Adopted at the Sessions of August 9 and 10, 1923.
>
> I
>
> By Article 10, the members of the League of Nations obligate themselves collectively and individually with regard to each other:
>
> (1) to respect the territorial integrity and the existing political independence of all the members of the League;
>
> (2) to maintain this territorial integrity and this political independence as against all external aggression.
>
> This second obligation implies for every State which is a Member of the League, the guarantee that, in case of aggression from another State, the Members of the League will lend it assistance with a view to maintaining or re-establishing the *status quo* threatened or destroyed by violence. The legality of the claims which may have been the cause of the aggression is not thereby put into

[3] James Brown Scott, Am. Journ. of Int. Law, pp. 108-113. *Ante,* Chapter VII, I, C.

question, and recourse to proper pacific procedure looking to eventual satisfaction remains reserved.

The guarantee of Article 10 applies to the case of an aggression which is a *fait accompli,* and to that of a recourse to war which would not involve violations of engagements undertaken by Articles 12, 13 and 15 of the Covenant. There is thus no conflict with the exercise of the collective sanctions as provided for in Article 16 of the Covenant.

II

The assumption of the guarantee is the execution of a judicial obligation directly arising from the Covenant.

In the present organisation of the League the assumption of the guarantee imposes upon the States which are members the duty of applying to the aggressor the two sanctions pronounced as obligatory by Article 16 of the Covenant, *i.e.,*

(1) Severance of trade and financial relations;

(2) The obligation of permitting passage across their territory to the forces of all members of the League who participate in a common action to the end that the engagement of the League be respected.

Each of the States which are members remains the judge of the question whether, and in what measure, it is obliged to assure the execution of its duty of guarantee by the employment of the military forces at its disposal.

III

Each State which is a member shall decide concerning the circumstances which effect the obligation of guarantee, but it is for the Council, in virtue of Article 10 of the Covenant, to decide, by a majority vote, whether or not there is occasion for the guarantee to be made effective.

In accordance with Article 15 of the Covenant, neither the vote of the aggressor nor the vote of the victim of the so-called aggression is counted.

IV

In case of aggression, the Council, in accordance with Article 10, should meet at once to draw up a concerted plan of action, and make all necessary recommendations to the members for their specific co-operations in its execution.

The employment of the sanctions mentioned in No. II above may precede the deliberations of the Council.

It should be stated that the vote in favor of the text was twenty, the vote opposed to the text was one; twenty members abstained from voting. If it be borne in mind that a member abstains from voting when he does not wish to declare himself in favor of the text and yet is unwilling to record himself as opposed to it, it is evident that there was great difference of opinion among the members."[4]

(3) To submit disputes to arbitration or to inquiry.

Article 12 is as follows:

"The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

"In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

Article 13 provides for arbitration.

Article 14 provides for the formulation and submission by the Council of plans for the establishment of a Permanent Court of International Justice, and Article 15 provides for

[4] James Brown Scott, in The American Journal of International Law, Vol. 18, pp. 109, 110.

inquiry by the Council in regard to matters not submitted to arbitration or to the Court.

(4) To comply with the awards of arbitrators.

"The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith." (Article 13.)

(5) To comply with the judgments of the Permanent Court of International Justice.

The Court is not established by the Treaty itself, but by a subsequent statute formulated by the Council, and adopted and approved by the Assembly December 13, 1920, and incorporated in a supplemental treaty.

(6) To sever relations and to prevent intercourse with another Member resorting to war in disregard of its covenants under Article 12, 13, or 15.

"Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not." (Article 16.)

The last clause of this sentence is of great importance. The prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, seems to involve a complete denial of any rights of neutrals. Neutrals have always suf-

fered from the action of belligerents in attempting to isolate their enemies. The rights of a belligerent to establish a blockade, to seize contraband, and to visit and search merchant ships have been generally recognized. In every great war, however, neutrals have been treated abominably. The United States suffered by the acts both of England and France in the Napoleonic wars, and by the acts both of England and Germany prior to the entry of the United States into the World War. Article 16 involves the assertion by the belligerents of the right to control the action of neutrals to a far greater extent than any of the writers on international law have recognized as within belligerent rights. Whether in a particular case a given neutral would submit to the assertion of this unqualified and unlimited right of the Members of the League to cut off all intercourse between the neutral and another Member of the League, is a question. The assertion by the Covenant of the rights of Members of the League to infringe the neutral rights of non-members is of the utmost importance, and has been generally overlooked.

For a full discussion of "The Economic Weapon of the League" reference is made to the proceedings of the 21st Plenary Meeting of the Assembly, pp. 438-458.

(7) To contribute armed forces.

Article 16 goes on to provide that

> "It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

With this provision should be compared the powers of the United States under Article IX of the Articles of Confederation.

> "The United States in Congress assembled shall have authority to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such

> State; which such requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled."

Under the Articles of Confederation the requisitions of the United States on the States for troops were binding. Under Article 16 of the League Covenant, the Council has simply the power to recommend. In spite of the provisions of the Articles of Confederation, Congress was practically powerless to raise troops, and the lack of this power was one of the reasons leading to the adoption of the Constitution. As the power of the Council in the League Covenant is purely advisory, the weakness of the League, from a military standpoint, is obvious.

(8) To furnish mutual support against a covenant-breaking Member.

Article 16 goes on further to provide:

> "The Members of the League agree, further, that they will mutually support one another in the financial and

economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State."

(9) To afford passage to troops and to forces co-operating to protect the covenants of the League.

Article 16 goes on further to provide that Members

"will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League." [5]

(10) To act against non-members refusing to accept the obligations of membership in the League.

"In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

"Upon such invitation being given the Council shall immediately institute an enquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

"If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

[5] Germany wishes to join the League, but objects strongly to this provision.

> "If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute." (Article 17.)

The third paragraph of this Article is ambiguous. It states that if the invited non-member State refuses to accept the invitation, "and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action." The words "resort to war" may mean make war upon, or engage in war with. If the non-member State is the aggressor, the situation is clear. Suppose, however, that the non-member State has given a Member cause for war, and refuses to accept the obligations of membership in the League for the purposes of the dispute, and that in order to enforce its rights the Member begins war against the non-member. It is not clear whether in such case the injured Member who begins the war is to have the support of the other Members, or not.

The fourth paragraph of Article 17 is also not clear. This paragraph purports to give the Council power to prevent hostilities between non-members of the League. This is an assertion by the League of the right of the League to interfere to prevent non-members from exercising their immemorial right of fighting each other. In other words, the League is to act in some manner, not simply to control its own members, but as a policeman to keep order in the rest of the world. What measures the Council is expected to take are left to conjecture. When a policeman separates two men who wish to fight, he does so by physical force. How the Council is to prevent two non-member nations from fighting without physical force at its command, is not suggested, but the language is clearly broad enough to give the Council power to declare a boycott of the would-be belligerents on behalf of all Members of the League.

(11) To register treaties.

"Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered." (Article 18.)

Whether this Article applies to the treaty between Great Britain and the Irish Free State is in dispute, but such treaty has been registered by the Free State under this Article.

(12) To procure release from obligations inconsistent with the Covenant.

"In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations." (Article 20.)

(13) To place international bureaus and commissions under the direction of the League.

"There shall be placed under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent. All such internal bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League." (Article 24.)

(14) To interchange information as to armaments.

"The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes." (Article 8.)

(15) To entrust the League with the general supervision of certain international traffic.

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: (c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs; (d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest." (Article 23.)

B. NEGATIVE OBLIGATIONS.

(1) To limit armaments.

Article 8 provides that

"The Members of the League recognise that the maintenance of peace requires the reduction of armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

"The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

"Such plans shall be subject to reconsideration and revision at least every ten years.

"After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council."

These provisions create an international servitude in favour of the League as against a Member of the League with reference to the limitation of armaments, subject to the following conditions:

1. A formulation of plans by the Council for such reduction for consideration and action of the several Governments.

2. The adoption of the Council's plans by the several Governments. Here again the language of the Covenant is not clear. The Council "shall formulate plans for such reduction." It is not stated that the Council shall formulate plans for such reduction by each of the several Governments, but "for the consideration and action of the several Governments." The Council may, therefore, formulate plans for the reduction of armaments by one or more different Governments. Again, it is provided that after these plans shall have been adopted by the several Governments "limitations of armaments therein fixed shall not be exceeded without the concurrence of the Council."

This language raises a question as to whether, in case the Council formulates a plan for the reduction of armaments by France and England, and France adopts the plan, such adoption has any effect until England also adopts it. In other words, does the adoption of a plan by one Government create an international servitude, or is such servitude conditional on the adoption of the plan by all the Governments concerned? If the consent of all the Governments is necessary, may a Government which has adopted the plan recede from its adoption before all the others have adopted it? On general principles, if the adoption of the plan by all is necessary, the withdrawal by one before all have adopted it would be permissible. Yet, in the case of the adoption of amendments to our Constitution there is no provision for any withdrawal of ratification.

Within what time must the plans be adopted to render such adoption binding? On general principles the adoption must be made within a reasonable time.

In Dillon *v.* Gloss, 256 U. S. p. 368, the Supreme Court of the United States, in construing Article V of the Constitution, holds that amendments submitted thereunder must be ratified within some reasonable time after their proposal; and that under this Article, Congress, in proposing an amendment, may fix a reasonable time for ratification; and that the period of seven years fixed by Congress in the Resolution proposing the Eighteenth Amendment was reasonable. The Court says:

"We do not find anything in the Article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do not find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavour, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson 'that an alteration of the Constitution proposed to-day has relation to the sentiment and the felt needs of to-day, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.

"That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be

able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.

"Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified."

The adoption of plans for disarmament is not necessarily governed by the same rule that applies to the ratification of Constitutional amendments. It would seem, however, that the reasoning of the Court just quoted would apply to the adoption of plans by the several Governments for the limitation of armaments. Such adoption, then, must be made within a reasonable time and the Council has the right to fix a definite time which shall not be exceeded. On the other hand, if the Covenant itself requires adoption within a reasonable time, the Council would have no power to extend that time by fixing a longer period for the adoption of the plans. Considering the nature of armaments and the plans for their reduction, and that such plans shall be subject to reconsideration and revision at least every ten years, it is clear that a reasonable time for the adoption of such plans cannot exceed ten years. It is not clear, however, that a reasonable time is not a much shorter period than ten years. What is a reasonable time for ratification of

amendments to our Constitution is determined by the United States Supreme Court. In the case of the League Covenant the determination of this question is apparently left to the Permanent Court of International Justice, *if* that Court can get jurisdiction of the parties.

The Council is given authority to formulate plans "for such reduction" of national armaments. Suppose that the Council formulates plans calling for a reduction of armaments by ten countries, and not reducing the armaments of the others. Is the acceptance of such plans by the nations whose armaments are not reduced essential? It is not so provided in terms, and does not seem to be a necessary implication. Assume that the plans call for the reduction of armaments by every nation but one, this nation is not required to adopt these plans. The nations which do adopt them cannot thereafter exceed the limitations fixed by the plans. Can the nation whose armament has not been reduced thereafter increase its armament? The article does not provide for the *determination* of all national armaments by the Council, but simply for the *reduction* of armaments; and it is only the armaments which have been reduced which cannot be increased. Taking the article literally, therefore, the nation whose armaments were not reduced would have the right to increase it. In a constitutional document like the Covenant, however, such an interpretation would be contrary to the spirit of the article, and it would probably be held, therefore, that if plans for the reduction of armaments by every nation but one, were formulated and adopted by those nations, the nation whose armament was not reduced would have no right to increase its armament after the adoption of such plans by all the other nations involved.

On the other hand, the nation whose armament is not reduced is not required to adopt the plans, and the mere formulation of plans imposes no obligation upon it. It would seem, therefore, that a nation whose armament was not reduced by the plans might increase it until such time as the plans were adopted by the other nations.

(2) *To respect as against external aggression the territorial integrity and existing political independence of all Members of the League.*

The explanation already given as to the positive obligation under Article 10, to preserve, sufficiently covers the negative obligation, under the same Article, to respect.

(3) *Not to resort to war for a limited period after arbitration or action by the Council.*

"The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report of the Council.

"In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute." (Article 12.)

(4) *Not to resort to war against a Member complying with the award of arbitrators.*

"The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

"The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith." (Article 13.)

(5) *Not to go to war with any Member complying with the recommendations of the Council.*

"If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the

Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

"If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

"If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

"The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

"In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute." (Article 15.)

(6) *Not to enter into obligations inconsistent with the Covenant.*

"The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof." (Article 20.)

2. Moral Obligations.

In addition to the legal obligations above set forth, certain obligations are imposed by the Covenant upon the Members of the League, which are not sufficiently definite and precise to be termed legal. These moral obligations are as follows:

A. TO PREVENT THE EVIL EFFECTS ATTENDANT UPON PRIVATE MANUFACTURE OF MUNITIONS.

"The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety." (Article 8.)

B. TO REDUCE NATIONAL ARMAMENTS.

"The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." (Article 8.)

C. TO FOLLOW THE ADVICE OF THE COUNCIL UPON THE MEANS BY WHICH ARTICLE 10 SHALL BE FULFILLED.

While the language of the Covenant appears to make this a legal obligation, the political interpretation of Article 10 is

intended to reduce that obligation to a moral one. *Ante, Legal Obligations,* A (2).

D. TO CONTRIBUTE ARMED FORCES TO PROTECT THE COVENANTS OF THE LEAGUE.

"It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." (Article 16.)

E. TO ACT AS MANDATORY UNDER ARTICLE 22.

F. TO IMPROVE LABOUR CONDITIONS.

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: (a) will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations." (Article 23.)

G. TO SECURE JUST TREATMENT OF NATIVES.

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

"(b) undertake to secure just treatment of the native inhabitants of territories under their control." (Article 23.)

H. TO SECURE AND MAINTAIN FREEDOM OF COMMUNICATIONS AND OF TRANSIT, AND EQUITABLE TREATMENT OF THE COMMERCE OF ALL MEMBERS OF THE LEAGUE.

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

"(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind." (Article 23.)

I. TO PREVENT AND CONTROL DISEASE.

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

"(f) will endeavour to take steps in matters of international concern for the prevention and control of disease." (Article 23.)

J. TO ENCOURAGE RED CROSS ORGANIZATIONS.

"The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world." (Article 25.)

III. Obligations of Members of the Organization of Labour.

Membership in the League of Nations and in the Organization of Labour, are apparently intended by the Treaty to be identical. The uncertainty on this point raised by the language used has been already discussed, *Ante,* Chapter II. For some reason the League and the Organization are made separate bodies. The obligations of Members of the Organization, like those of the Members of the League, are both legal and moral in their character. The legal character of the definite obligations of the Members of the Organization, is even clearer than that of similar obligations of Members of the League, because the sanctions for such obligations are more obviously legal in

their character. Both the Organization and the League are rudimentary governments in which the executive, legislative and judicial functions are imperfectly developed.

1. Legal Obligations.

A. POSITIVE OBLIGATIONS.

(1) *To pay certain expenses.*

"Each Member will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be." (Article 399.)

"The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union." (Article 424.)

(2) *To nominate non-Government Delegates to the General Conference of Representatives of the Members.*

"The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries." (Article 389.)

(3) *To communicate the names of the Delegates and their advisers to the International Labour Office.*

"The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members." (Article 389.)

(4) *To bring the recommendation or draft convention proposed by the General Conference before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action.*

"Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action." (Article 405, which contains limitations hereafter set forth.)

(5) *In the case of a recommendation, to inform the Secretary-General of the action taken.*

"In the case of a recommendation, the Members will inform the Secretary-General of the action taken." (Article 405, which contains limitations hereafter set forth.)

(6) *In the case of a draft convention, if the Member obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General.*

"In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General." (Article 405, which contains limitations hereafter set forth.)

(7) *To take such action as may be necessary to make effective the provisions of the convention so ratified.*

"In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities

within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention." (Article 405.)

"Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles." (Article 411.)

The preceding four obligations (4, 5, 6 and 7) are subject to the following limitations:

"In the case of a Federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case." (Article 405.)

"In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned." (Article 405.)

(8) *To communicate to the Secretary-General of the League of Nations any convention which, though failing to secure the support of two-thirds of the votes cast by the Delegates present when coming before the Conference for final consideration, has been agreed to by any of the Members of the Permanent Organization under Article 407.*

"If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the

Permanent Organisation to agree to such convention among themselves.

"Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it." (Article 407.)

(9) *To make an annual report to the International Labour Office.*

"Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which is is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request." (Article 408.)

(10) *To nominate three persons of industrial experience for the panel from which Members of any Commission of Enquiry may be drawn under Article 412.*

"The Commission of Enquiry shall be constituted in accordance with the following provisions:

"Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Enquiry shall be drawn." (Article 412.)

(11) *To furnish to the Commission of Enquiry all the information in their possession which bears upon any complaint under Article 411.*

"The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 411, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commis-

sion all the information in their possession which bears upon the subject-matter of the complaint." (Article 413.)

(12) *To notify the Secretary-General as to acceptance or rejection of the report of the Commission of Enquiry.*

"The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

"Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations." (Article 415.)

(13) *To discontinue punitive measures against a defaulting government when the default is officially condoned.*

"The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government." (Article 420.)

(14) *To apply conventions to colonies, etc.*

"The Members engage to apply conventions which they have ratified in accordance with the provisions of this

Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing:

"(1) Except where owing to the local conditions the convention is inapplicable, or

"(2) Subject to such modifications as may be necessary to adapt the convention to local conditions." (Article 421.)

The article does not state who is to decide as to the applicability of the convention to local conditions, or what modifications may be necessary to adapt it to such conditions. It is provided by Article 416 that "In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice," and by Article 411, that "Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles." Neither Article 411 nor Article 416 expressly applies to Article 421. It must be noted that the article assumes that the particular convention does not by its terms apply to colonies, protectorates and possessions which are not fully self-governing. If the convention by its terms does so apply, then Article 411 is clearly applicable, and any other Member which has ratified the same convention may file a complaint against the Member which has failed to carry out the convention with reference to colonies, protectorates and possessions which are not fully self-governing, and, therefore, the procedure of the Commission of Inquiry of the Permanent Court is in accordance with Articles 411 to 420. Where the convention does not by its terms apply to colonies, protectorates, and possessions which are not fully self-governing, Article 421 creates a legal obligation on the part of the Members who have ratified to apply the convention with the exceptions or modifications stated in Article 421. The question then arises as to the procedure for the enforcement of the

obligation contained in Article 421. The procedure by a Commission of Enquiry and subsequent appeal to the Permanent Court, under Articles 411 to 420, being inapplicable, what other provision is there for the settlement of a dispute in regard to Article 421? The jurisdiction of the Permanent Court appears to be governed by Article 423 of the Treaty and by Article 36 of the Statute of the Permanent Court. Article 423 of the Treaty is as follows:

> "Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the Present Treaty *shall be referred* for decision to the Permanent Court of International Justice."

This Article gives the Permanent Court *compulsory* jurisdiction of any question or dispute relating to the interpretation of Article 421. The nature and extent of this jurisdiction are not clear. If the dispute relates to the interpretation of Article 421, the jurisdiction of the Court to interpret that Article is clear. The Court might hold that the determination of the applicability of the convention to local conditions is a matter to be determined solely by the Court itself; or it might hold that the determination of the Member in regard to the local conditions of a particular colony belonging to it is conclusive; or it might hold that the decision of such Member is *prima facie* binding and can be overthrown only by proof of bad faith. The first interpretation is the most natural, since under Article 36 of the Statute of the Permanent Court a dispute concerning the existence of any fact which, if established would constitute a breach of an international obligation, is one of the special grounds of jurisdiction of the Court. The second interpretation, allowing each Member to decide for itself, would render the application of Article 421 purely a moral obligation. The third interpretation, however, is not intrinsically unreasonable.

Under Article 423 the Permanent Court has jurisdiction of any "question or dispute relating to the interpretation" of

Article 421. The Court, therefore, clearly has jurisdiction to settle the meaning of that Article. Having decided what the Article means, has the Court any further power in the matter? This is by no means clear. Two different situations may arise. First, where there is no dispute between the Members as to the interpretation of Article 421, and where one Member simply refuses to comply with the terms of that Article. The second situation is where there is a dispute as to the interpretation of the Article and the Court settles that interpretation. The first case is not one which can be brought within the compulsory jurisdiction of the Permanent Court under Article 423, because the compulsory jurisdiction under that Article is limited to questions or disputes relating to the interpretation. If both Members, however, have accepted the compulsory jurisdiction of the Court under the protocol to the Statute in accordance with Article 36 of the Statute, then the Court has compulsory jurisdiction over the dispute under clauses (c) and (d) of Article 36: "(c) The existence of any fact which, if established, would constitute a breach of an international obligation. (d) The nature or extent of the reparation to be made for the breach of an international obligation." Under this same Article, in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. Where both Members, however, have not accepted the compulsory jurisdiction of the Permanent Court in accordance with Article 36 of the Statute, it would seem that a refusal of one Member to comply with Article 421 would raise a dispute which could not be brought before the Court either under the compulsory jurisdiction of Article 423, or under that of Article 36 of the Statute. Such a dispute, therefore, would be governed by Articles 12, 13, 15, and 16 of the Covenant of the League.

The other question as to the power of the Permanent Court, after having acquired jurisdiction of a dispute relating to the interpretation of Article 421, to take any further action than to interpret the Article, is a more difficult one. The fact that the Court is given jurisdiction under special conditions, or for a special purpose, does not necessarily limit its power to deal

with a case of which it thus acquires jurisdiction. It is well settled, for example, that where an appeal is taken to the Supreme Court of the United States upon a point of constitutional law, which is essential to give that Court jurisdiction of the appeal, such appeal brings the whole case before the Court for decision, so that the Court may decide the case without even passing on the question of constitutional law.[6]

It is a possible construction, therefore, to hold that where the Permanent Court has acquired jurisdiction of a question of interpretation of Article 421, it acquires general jurisdiction of the whole controversy between the Members, and may make a decree requiring the Member bound by Article 421 to comply with its terms specifically. Such decree would include such exceptions and modifications as seem proper to the Court on account of local conditions, and the Court might also award damages in favour of the injured Member against the defaulting Member. The decree, however, must stop there in any case, because there is nothing either in the Statute of the Permanent Court, or in Part XIII of the Treaty, providing for any sanctions for such decree, or authorizing the Court to fix any sanction in the nature of limited outlawry, as provided for in Articles 405 to 420 of the Treaty. Yet while no sanction is created by the fundamental law of the Permanent Organization for the enforcement of the decree of the Permanent Court under Article 423, there is a certain sanction in case the Members who are parties to the decree are also Members of the League of Nations. As has already been pointed out, the Treaty appears to assume identity of membership in the Permanent Organization of Labour and the League of Nations, an identity which the provisions of the Treaty do not expressly assure. Members of the Permanent Organization, however, who are also Members of the League, are bound by the following provisions of Articles 13 and 15 of the Covenant of the League.

> "The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the

[6] McCurdy *v.* United States, 246 U. S. 263, 269.

League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto." "If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof."

(15) *To notify the International Labour Office of action taken in regard to colonies, etc.*

Article 421 contains the further provision:

"and each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing."

(16) *To refer disputes to the Permanent Court.*

"Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice." (Article 423.)

It must be noted that this Article refers only to questions or disputes relating to the interpretation of Part XIII, or of any subsequent convention concluded by the Members in pursuance of Part XIII. It should be noticed, however, that under this Article the Permanent Court has jurisdiction over all Members in regard to this particular class of disputes, whereas the compulsory jurisdiction of the Court in general is limited to those Members who sign the protocol.

B. NEGATIVE OBLIGATIONS.

The negative obligations of the Members are,

(1) Not to rescind action taken under Article 405 to make effective the provisions of a convention ratified under Article 405 or Article 407. The absence of any provision for a withdrawal by a Member from any convention so ratified, is a denial of the right of such Member to rescind any action taken to make such convention effective.

(2) Not to continue measures taken against a defaulting Member after the default has been condoned by the Commission of Enquiry of the Permanent Court, under Article 420. There may, of course, be also a positive obligation to discontinue such measures already taken.

2. Moral Obligations.

Article 427 imposes certain moral obligations on the Members. These obligations are too vague to be called legal. They represent standards of action which the Members should strive to uphold.

> "The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery, provided for in Section I and associated with that of the League of Nations.
>
> "They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.
>
> "Among these methods and principles, the following

seem to the High Contracting Parties to be of special and urgent importance:

"First:—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

"Second:—The right of association for all lawful purposes by the employed as well as by the employers.

"Third:—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

"Fourth:—The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

"Fifth:—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

"Sixth:—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

"Seventh:—The principle that men and women should receive equal remuneration for work of equal value.

"Eighth:—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

"Ninth:—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

"Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world." (Article 427.)

CHAPTER IX

SANCTIONS

I. In the League of Nations.

FOR the first time in history the Treaty of Versailles has imposed on nations obligations of a legal character, by creating two super-states each with a law of its own.

While these legal obligations are apparently all of the same character and force, there is no general sanction provided for their performance. In the charter of any ordinary corporation the legal obligations of the members to the corporation are defined. If the charter itself fails to provide any specific sanction for the performance of these obligations, the corporation may enforce their performance by an action in court.

In the case of an American State, if the Constitution imposes certain obligations on the citizens of the State, the State may enforce those obligations by a procedure in its own courts. In the case of the League of Nations and Permanent Organization of Labour, however, although *legal* obligations of the Members to the League and to the Organization are obviously created by the Treaty, no provision whatever is made for any action *by the League or by the Permanent Organization* against a Member to enforce such obligations, thus showing the extremely rudimentary political character of these two governments.

Although no general sanctions for the enforcement of the legal obligations of Members of the League and of the Permanent Organization are provided for, there are certain special sanctions in the Treaty which require notice. These sanctions are as follows:

1. Suspension of the Right of Withdrawal from Membership.

> "Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal." (Article 1.)

This provision of Article 1 by necessary implication provides that in case of default by any Member of the League in regard to its international obligations, and its obligations under the Covenant, its right of withdrawal shall be suspended so long as such default continues. The absence of any provision for determining the question of fact whether or not the Member's obligations have been performed, has already been noticed. *Ante,* Chapter III, Part II, I, D.

2. Enforcement of Guarantees.

> "Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments." (Article 1.)

On general principles it is clear that if effective guarantees are given *by* a Member *to* the League of its sincere intention to observe its international obligations, these guarantees may be enforced by the League in case of default by such Member. How such guarantees are to be enforced is not provided. The question is left open. Whether the League may proceed in such case by a process analogous to that of strict foreclosure, treating the guarantees as forfeited by the default, or whether it may proceed like a pledgee to enforce the guarantee

by the disposition after notice of the thing pledged, or whether it must proceed by an equitable proceeding in the Permanent Court for foreclosure of the rights of the defaulting Member, is not indicated. It is a commentary on the extraordinary draftsmanship of this Treaty that no express provision is made for any suit by or against the League of Nations in its own Permanent Court. It is denied by many that the League is a super-state, and yet only as a State can it come into its own Court.

3. Means Advised by the Council for the Enforcement of Obligations of Members under Article 10.

Article 10 is as follows:

> "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled."

While this Article does not provide for any specific sanction, it does provide for the determination of such sanction by the Council. When the Council advises upon the means by which the obligations of Article 10 shall be fulfilled, such advice gives the other Members of the League a legal right to use such means against the defaulting Member, and in addition, imposes an obligation upon the other Members to use the means so advised by the Council. As to whether this obligation is legal or moral, see *Ante,* Chapter VIII, Part II, 1, A, (2).

4. Action of the League to Safeguard the Peace of Nations under Article 11.

> "Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the

League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council." (Article 11.)

This Article is not limited to the obligations of Members, nor does it provide any specific sanction for those obligations. Any action by a Member involving war or threat of war, is in violation of its obligations under the Covenant, and is, therefore, subject to the sanction of any action which the League may deem wise and effectual to safeguard the peace of nations.

5. Action to Enforce an Award under Articles 12 and 13.

"In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto." (Article 13.)

This provision is by no means clear. It fails to state to whom the Council shall propose, or what the effect of such proposal shall be. The probable meaning of the provision is that the Council shall decide what steps may be taken by the other Members against a defaulting Member.

6. Publicity by the Council as to Disputes Submitted under Article 15.

"The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

"If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto." (Article 15.)

7. Publicity by a Member of the League Represented on the Council as to Disputes Submitted under Article 15.

"Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same." (Article 15.)

8. Action by Individual Members of the League as to Disputes Submitted under Article 15.

"If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice." (Article 15.)

9. Severance of Relations under Article 16.

"Should any Member of the League resort to war in disregard of its covenants under Article 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not." (Article 16.)

10. The Use of Armed Forces under Article 16.

"It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the

League shall severally contribute to the armed forces to be used to protect the covenants of the League." (Article 16.)

11. Joint Action by Members for Mutual Support under Article 16.

"The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League." (Article 16.)

12. Expulsion from Membership.

"Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon." (Article 16.)

13. Suspension of Treaties until Registered.

"Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered." (Article 18.)

This article may be considered, first, as making the registry of treaties a condition precedent to their validity; and, second, as imposing a sanction on the obligation of the Members to

register such treaties. As a condition precedent it constitutes an international servitude limiting the power of all Members of the League to exercise the sovereign right of treaty-making without registration of the treaty. The terms of the Article apply, not only to treaties between Members of the League, but also to treaties between Members and non-members.

An interesting controversy has arisen between Great Britain and the Irish Free State as to the meaning of this article. Great Britain claims that it does not apply to the treaty between Great Britain and the Irish Free State, but the Irish Free State has registered the treaty notwithstanding. The legal status of the component parts of the British Empire is a very interesting question, but it is hard to see how the different nations constituting that empire can be independent members of the League of Nations without making the relations between each other international under the terms of the Covenant.

II. In the Permanent Organization of Labour.

Here too there is no general provision for sanctions for the obligations imposed by the Treaty.

Certain special sanctions, however, are provided by the Treaty. All of these sanctions rest on the initiative of some Member of the Organization. The two methods of enforcing these obligations are:

(1) By a reference of the matter to the Permanent Court, and

(2) By reference to a Commission of Enquiry.

Article 416 is as follows:

> "In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice."

The effect of this provision is to entitle any Member to bring before the Permanent Court the failure of any other Member to comply with the obligations of Article 405, that is,

to bring the recommendation or draft convention before the competent authorities; to inform the Secretary-General of the action taken in case of a recommendation; to communicate the formal ratification to the Secretary-General; and to take such action as may be necessary to make effective the provisions of such conventions.

Under Article 416 the Permanent Court has compulsory jurisdiction in regard to the matters above stated, whereas, under the Statute of the Permanent Court, the compulsory jurisdiction is limited to those nations signing the protocol. Little attention has been paid to the fact that while the compulsory jurisdiction of the Court under Article 36 of the statute is thus limited the compulsory jurisdiction created by Articles 415 and 416 of the Treaty of Versailles is not limited in any manner whatever.

The Permanent Court thus having compulsory jurisdiction of the matter referred to it may make any order that it sees fit regarding the matter. The Court, therefore, has a legal right either to order the defaulting Member to comply specifically with any of its obligations or to pay damages for the non-performance of its obligations, or both.

In addition to the power of the Permanent Court to render judgment either for specific performance or damages against the defaulting Member the court has the power and the duty under Article 418 to indicate the measures, if any, of an economic character which it considers to be appropriate, and which the other Governments would be justified in adopting against a defaulting Government; that is to say, the Court has the power and the duty to fix the sanction for its own decree.

The execution of the sanction is not by the Permanent Organization as such or by any of its officials. Such execution is left entirely to the volition of individual members. The situation is somewhat analogous to that of crime in early Anglo-Saxon Law.

> "In Anglo-Saxon as well as in other Germanic laws we find that the idea of wrong to a person or his kindred is still primary, and that of offence against the common weal

secondary, even in the gravest cases. Only by degrees did the modern principles prevail, that the members of the commonwealth must be content with the remedies afforded them by law, and must not seek private vengeance, and that on the other hand public offences cannot be remitted or compounded by private bargain.

"Personal injury is in the first place a cause of feud, of private war between the kindreds of the wrong-doer and of the person wronged. This must be carefully distinguished from a right of specific retaliation, of which there are no traces in Germanic law. But the feud may be appeased by the acceptance of a composition. Some kind of arbitration was probably resorted to from a very early time to fix the amount. The next stage is a scale of compensation fixed by custom or enactment for death or minor injuries, which may be graduated according to the rank of the person injured. Such a scale may well exist for a time without any positive duty of the kindred to accept the composition if offered. It may serve only the purpose of saving disputes as to the amount proper to be paid where the parties are disposed to make peace. But this naturally leads to the kindred being first expected by public opinion and then required by public authority not to pursue the feud if the proper composition is forthcoming, except in a few extreme cases which also finally disappear. At the same time, the wrong done to an individual extends beyond his own family; it is a wrong to the community of which he is a member; and thus the wrong-doer may be regarded as a public enemy. Such expressions as 'outlaw against all the people' in the Anglo-Saxon laws preserve this point of view. The conception of an offence done to the State in its corporate person, or (as in our own system) as represented by the king, is of later growth." [1]

In the case of the Permanent Organization of Labour the obligation of one Member to another is the primary obliga-

[1] Pollock & Maitland's Hist. of Eng. Law, I, 24.

tion which is determined by the Permanent Court. The refusal of a Member to comply with the decision of the Court is an injury to the Member in whose favour the judgment is rendered. The Permanent Organization, however, takes no steps as such to redress this injury or to enforce the decree of the Court. Such a default, however, results in a legal situation which may be classed as limited outlawry. The defaulting Member by its default violates an obligation to the Permanent Organization as well as to the other parties to the judgment. By reason of its default the protection of the law as against action by other Members is therefore removed to the extent that the decree of the Court indicates measures of an economic character which it considers to be appropriate for adoption by other Governments against the defaulting Government. The sanction for the decree of the Permanent Court, therefore, under Articles 418 and 419, is not any action by the Court or by the Organization, but is merely negative, in removing the protection of the law from the defaulting Member to the extent indicated.

The analogy between the rudimentary condition of private law in its early stages as set forth in Pollock and Maitland, and the rudimentary condition of international law in its early stages, for it must be remembered that until the Treaty of Versailles, international law in the sense of a law governing independent sovereigns did not exist, is extremely interesting. Outlawry in fact, has been suggested as a means of preventing war in general. An elaborate plan by S. O. Levinson was submitted to the United States Senate by Senator Borah, on January 19, 1922. The difficulty with this plan is that it ignores the fundamental nature of outlawry, which means putting outside the law, that is, outside the protection which the legal authorities furnish to any one within the law. In order that there should be an outlaw, there must first be a law, and there is no law for lawyers without a law-giver.[2] The Treaty of Versailles, in constituting the Permanent Organization of Labour and the League of Nations, creates two law-givers with limited powers. The provision of Article 419 that any other

[2] See "The Price of International Law," Va. Law Rev., X, 495.

Member may take against the defaulting Member measures of an economic character, indicated in the decision of the Court, necessarily implies that it may take no such measures without the authority of the Court. The Treaty, therefore, makes it a law of the Permanent Organization that Members shall not take measures of an economic character against each other except as indicated in Article 419. Any other interpretation of the Treaty makes Article 419 absolutely meaningless. The Treaty is very obscure on this point, not being express or positive as to what economic measures are forbidden in general, yet it is only the implied prohibition of such measures that makes the express authorization thereof by Article 419 of any consequence.

Article 16 of the Covenant of the League contains the following provisions:

> "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not." (Article 16.)

This Article provides for the use of economic measures, but by the terms of the Article itself these economic measures are war measures, resulting from an act of war committed by one Member of the League against all others.

Whether the economic measures referred to in Article 418 of the Treaty are those referred to in Article 16 of the League Covenant, is not clear. It is clear, however, that Articles 418 and 419 impliedly prohibit taking economic measures against

one Government by another except as indicated in the report of the Commission or in the decision of the Court.

Article 423 is as follows:

> "Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice." (Article 423.)

It follows, therefore, that if any Member takes any measure of an economic character against another Member except as provided in Article 419, such action may be questioned by any Member against whom it is taken.

Under Article 423, the Permanent Court has compulsory jurisdiction over such question. If then Member A raises its tariff or restricts immigration, it may be charged with "taking measures of an economic character" against other Governments. Under Article 423 any other Government may dispute the rightfulness of such increase of tariff or change in immigration law. Of this dispute, under Article 423, the Permanent Court has compulsory jurisdiction. No principles of law are laid down for the guidance of the Court in such matters and there is no existing rule of international comity which forbids any nation to restrict the movement of goods or immigrants from another nation. Any such restriction, however, beyond that existing on the date of the Treaty is apparently prohibited by Article 419. This result of the obscurity of the Treaty is so extraordinary that it may become necessary for the Permanent Court to give to the Treaty a different interpretation. The obvious interpretation is that all economic measures sanctioned by the Court are permitted, and that all new economic measures after the date of Treaty not sanctioned by the Court are prohibited. It is possible, however, that the Court may make some new classification of economic measures by which certain measures will be permitted in any case, while other measures will be prohibited

unless sanctioned by the Court. Such a classification, however, would necessarily be judicial legislation, because there is nothing resembling common law on the subject, and there is nothing in the Treaty to indicate what economic measures can be taken without the consent of the Court.

For the obligation to communicate special conventions under Article 407 to the Secretary-General of the League of Nations, no express sanction is provided.

For the obligation to make annual reports under Article 408, no express sanction is provided.

For the obligation to pay the expenses of Delegates and their advisers under Article 399, no express sanction is provided.

For the obligation to nominate members for the panel for the Commission of Enquiry under Article 412, no express sanction is provided.

For the obligation to furnish information to the Commission of Enquiry under Article 413, no express sanction is provided.

For the obligation to secure the effective observance of any convention which has been ratified by the Member and one or more other Members under Article 411, the sanction is quite complicated.

The first step is a complaint by one Member who has ratified the Treaty against another, which is to be filed with the International Labour Office.

The second step is taken by the Governing Body under Article 411, and is a reference of such a complaint by the Governing Body to the Commission of Enquiry. This reference may be made at once, if the Governing Body does not communicate with the Government complained of, or if the Governing Body does make such communication and no statement in reply is received within a reasonable time. Article 411 is as follows:

> "Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective

observance of any convention which both have ratified in accordance with the foregoing Articles." (Article 411.)

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 409.

The constitution of the Commission of Enquiry is provided for in Article 412.

"The Commission of Enquiry shall be constituted in accordance with the following provisions:

"Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Enquiry shall be drawn.

"The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

"Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint." (Article 412.)

The securing of information for the Commission of Enquiry is provided for in Article 413, which is as follows:

"The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under

> Article 411, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint." (Article 413.)

The duty of the Commission of Enquiry in its report is provided for in Article 414, which is as follows:

> "When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken." (Article 414.)

Under Articles 419 and 420, the effect of the report of the Commission of Enquiry upon which no action is taken by the Permanent Court, is equivalent to a decree of the Court itself.

Article 415 provides for a reference or appeal from the report of the Commission of Enquiry to the Permanent Court, and is as follows:

> "The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.
>
> "Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations." (Article 415.)

The language of Article 415 is very obscure. It does seem, however, that the failure of any Government, within one

month from the receipt of the report, to inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report makes such report equivalent to a final judgment against such Member; that an acceptance of the recommendations also makes such report a final judgment; that a rejection of such recommendations without a proposal to refer the complaint to the Permanent Court also makes the report a final judgment; but that a rejection of the recommendations, filed within one month, and containing a proposal to refer the complaint to the Permanent Court operates as a *supersedeas* as to the report and suspends any further action thereon. Statutes providing for an appeal from the action of an administrative or judicial body to a Court are common. The peculiarity of Article 415 is that it does not speak of an appeal or reference to the Court, but of a mere proposal to refer. Such a proposal seems insufficient to bring the case before the Court. Under Article 40 of the statute of the Permanent Court "cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar." In either case, the subject of the dispute and the contesting parties must be indicated. The proposal to refer, therefore, under Article 415 appears to operate only as a *supersedeas* and not as an appeal. Nothing is said as to the time within which the case must be referred to the Permanent Court, nor as to the effect of the failure of the party proposing such reference to carry out its proposal. A reasonable interpretation of this Article, however, would hold that the *supersedeas* resulting from the proposal to refer will terminate unless such reference is made within a reasonable time, and that if such reference is made within a reasonable time the *supersedeas* will continue until the final decision by the Court.

The peculiar sanction for the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is not by the direct action of the Court, but is in the nature of a continuing punishment inflicted by other Members for the contempt of the defaulting Member in dis-

regarding such report or decision, analogous to the imprisonment for contempt inflicted by a court of equity to compel performance of its decrees. Accordingly, such punishment under Article 420 is to cease when the defaulting Government has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those of the decision of the Permanent Court as the case may be, and when such fact has been ascertained by the Commission of Enquiry or apparently upon appeal by the Permanent Court. Three things should be specifically noted in regard to this sanction:

(1) That it depends entirely upon the voluntary action of any Member who may decide to apply it;

(2) That the nature of the sanction is determined by the report of the Commission, or by the decision of the Court, as the case may be, and consists solely of measures of an economic character indicated in such report or decision;

(3) That the sanction may continue after the report of the Commission or the decision of the Court has been complied with by the defaulting Government until (a) the Secretary-General of the League has constituted a Commission of Enquiry; (b) The Commission of Enquiry has verified the fact of performance by the defaulting Government; (c) The Report of the Commission of Enquiry shall have been acquiesced in for one month, or, if not acquiesced in, until such report of the Commission has been confirmed by the Permanent Court. Attention is called to the length of time that may be necessary to produce a discontinuance of measures of an economic character that may have been taken against a defaulting Government:

(1) The defaulting Government must apply to the Governing Body;

(2) The Governing Body must meet, and under Article 393 it fixes its own time for meeting;

(3) The Governing Body must apply to the Secretary-General of the League to constitute a Commission of Enquiry;

(4) The Secretary-General must nominate three persons for this Commission in accordance with the provisions of Article 412;

(5) The Commission of Enquiry must make a report in favor of the defaulting Government, and

(6) The Secretary-General of the League must communicate the report of the Commission of Enquiry.

Article 415, referring to reports on complaints, says that this report must be reported to each of the Governments concerned in the complaint.

Article 420 provides that the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply. The report of the Commission, under Article 420, therefore, must be communicated and published by the Secretary-General; and presumably the communication must be not only to each of the Governments concerned in the original complaint, and therefore parties to the original report of the Commission or decision of the Permanent Court, but also to all the other Members of the League.

Under Article 419 there is no official determination of the fact of default by any one. Neither the Commission of Enquiry nor the Permanent Court is instructed or empowered to determine the fact of default. The determination of that fact is left to the judgment of any Member of the Permanent Organization. On the other hand, Article 420 contains elaborate provisions for the determination of the fact that the default has ceased. In other words, a Member may adjudge another Member a defaulter and guilty of contempt without the approval or consent of either the Commission or the Court; whereas to purge the defaulter of such contempt, action by both the Commission and the Court may be necessary. Now the punishment for contempt may have been inflicted under Article 419 by a Member who is not a party to the original complaint, so that the report of the Commission of Enquiry that the contempt has ceased clearly should be communicated to any Member who has taken measures to punish such contempt. It should also be communicated to all of the other Members because they are interested in knowing whether or not they are to be justified in taking similar economic measures.

CHAPTER X

THE CONSTITUTIONAL RIGHTS OF MEMBERS

I. Under the Covenant of the League of Nations.

THE Covenant of the League deals chiefly with the obligations of Members. Every obligation is an obligation of one person to another person, using the term "person" in the legal sense, and the person to whom the obligation is incurred has a corresponding right against the person bound. The language of the League Covenant is obscure. It is not clear whether the obligations of the Members are obligations to each other, as in the case of a partnership, or obligations to the League, as in the case of a corporation. The only provision for actions in court is by Members of the League. The League itself is the only government in the world that seems to have no power to sue in its own court.

Little is said about the rights of Members in the League Covenant. Such rights as result to one Member from the obligations imposed on other Members have been sufficiently dealt with in the chapter on the obligations of Members. The following rights, however, are expressly conferred upon Members by the League Covenant:

(1) To bring matters to the attention of the Assembly or of the Council.

> "It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting the international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." (Article 11.)

(2) To publish statements in regard to international disputes, under Article 15.

Where a dispute is submitted to the Council under Article 15, "any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same."

(3) To act in case of a failure by the Council to reach a unanimous report as to disputes submitted under Article 15.

Under Article 15,

> "if the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themeselves the right to take such action as they shall consider necessary for the maintenance of right and justice."

II. Rights of Members of the Organization of Labour.

In the case of the Organization of Labour, as in the case of the League of Nations, obligations are imposed upon Members without any clear statement as to whether those obligations are to the Organization or to each other. Members are entitled to sue in the Permanent Court of International Justice, but the Organization of Labour, like the League of Nations, appears to be without any standing in its own court. The rights of Members which result from the rights of obligations imposed on other Members, have already been discussed in the chapter on Obligations of Members. Certain specific rights of Members, however, are expressly set forth in Part XIII of the Treaty. These rights are as follows:

(1) To communicate with the director.

> "The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the

Representative of their Government on the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose." (Article 397.)

(2) To file complaints with the International Labour Office.

"Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles." (Article 411.)

(3) To refer matters to the Permanent Court of International Justice.

"In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice." (Article 416.)

"Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice." (Article 423.)

(4) To take measures of an economic character against a defaulting member.

"In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against

that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case." (Article 419.)

CHAPTER XI

THE CONSTITUTIONAL RIGHTS OF INDIVIDUALS

I. In General.

THE most striking difference between the constitutions of the League of Nations and the Organization of Labour on the one hand, and the Constitution of the United States, on the other, is in the failure of the Treaty of Versailles to recognize or protect in any way the rights of individuals. The greatest merit of the Constitution of the United States, including the first ten amendments, which are practically part of the original Constitution, is that the people themselves, in creating this new government, undertook to preserve forever in a written constitution, those rights and liberties which, after centuries of struggle on the part of the English people, had been incorporated in the unwritten constitution of England. The protection of the citizen from the tyranny of any government, was the most important feature of the Constitution of the United States. The Treaty of Versailles, on the other hand, one hundred and thirty years later, creating these two new governments, fails to offer any protection whatever to the individual, or to recognize that the individual has any rights which are beyond the control of any government. It must be noted that our Constitution not simply restricted the powers of the Federal Government, which was its own creation, but also restricted the rights of the States as against individuals. By Article I, § 10: no State shall "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." By Article IX, "no bill of attainder, or ex post facto law shall be passed" by Congress. The Fifth Amendment provides that no person shall be deprived by Congress of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

The Thirteenth Amendment provides:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The Fourteenth Amendment provides that

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In addition to these express provisions of the Constitution and its amendments, which protect the individual against the action of either the State or the National Government, there are numerous provisions in the Federal Constitution for the protection of the individual against the Federal Government, and in the State Constitutions for the protection of the individual against the State Governments. One of the objects of the Constitution, stated in its preamble, was to "secure the blessings of liberty to ourselves and our posterity" for the people of the United States who established that Constitution. The very foundation of our Constitution, therefore, is the protection of the individual against the arbitrary control of any Government. In the Treaty of Versailles, *Governments* are the only persons recognized as having any rights. That Treaty sets forth the rights and obligations of the Governments which constitute the League of Nations and the Organization of Labour, but it recognizes no rights whatever on the part of the individuals who compose the people governed. The Treaty of Versailles does not deny the existence of individual rights, but simply fails to recognize or protect those rights. In place of legal provisions for the protection of individuals, such as our Constitution contains, the Treaty of Versailles merely expresses lofty sentiments. That no legal consequences attach

to the expression of such noble sentiments, is obvious, but it would be unjust to ignore the fact that such sentiments are expressed. Attention is therefore called to the following provisions of the Treaty which express a regard for individuals without giving them any legal rights.

II. In the Covenant of the League.

1. Mandatories.

Article 22, relating to mandatories, is as follows:

"To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

"The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and this tutelage should be exercised by them as Mandatories on behalf of the League.

"The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

"Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these

communities must be a principal consideration in the selection of the Mandatory.

"Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

"There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

"In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

"The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

"A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

2. General Welfare.

Article 23 imposes certain moral obligations on the Members of the League, as follows:

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women an children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(b) undertake to secure just treatment of the native inhabitants of territories under their control;

(c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavor to take steps in matters of international concern for the prevention and control of disease."

III. In the Permanent Organization of Labour.

Part XIII of the Treaty contains various lofty sentiments. § I is as follows:

"Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

"And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

"Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

"The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following:"

Section II is as follows:

"The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

"They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article

of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavor to apply, so far as their special circumstances will permit.

"Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

"First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

"Second.—That right of association for all lawful purposes by the employed as well as by the employers.

"Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

"Fourth.—The adoption of an eight hours day or a forty-eight hours week as that standard to be aimed at where it has not already been attained.

"Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

"Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

"Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

"Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

"Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

"Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy

of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world."

While the League of Nations and the Organization of Labour are governments of such rudimentary character, that protection of the individual against the acts of these governments is not necessary, as in the case of the United States Government, the Members of the League are obviously unwilling to give their own citizens any rights or protection against their own governments, whereas, in framing the Constitution of the United States, the people insisted on protection, not only from the new government, but also from the existing State governments. However lofty the ideals of the League may be, they fail to include the American ideal of protecting the individual in his American rights of life, liberty, and the pursuit of happiness against the action of government. While the Treaty asserts that the maintenance of peace is dependent upon social justice, it contains not one line which gives the individual any protection whatever against an unjust government, except in the case of Mandates. The rights of the individual therefore, remain as before, entirely dependent upon his own government, and not protected by any international agreement.

CHAPTER XII

DIPLOMATIC IMMUNITY

I. In the League of Nations.

REPRESENTATIVES of the Members of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

"The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable." (Covenant, Article 7.)

"The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities." (Article 19, Statute of the Permanent Court.)

"It is not believed that commissioners appointed to fulfill judicial functions through service on mixed claims commissions, joint commissions or courts of arbitration are to be regarded as deriving from their offices a *diplomatic character*. . . .

"It must be clear that a general agreement to clothe an administrative officer with *diplomatic privileges* and immunities is not decisive that the individual is regarded as possessed of a diplomatic character."[1]

It follows that while the provisions as to diplomatic immunity above quoted are binding on all Members of the League, they are not binding on nations which are not Members. Thus, for example, if the Secretary-General of the League should visit the United States in his official capacity to gain information, his claim to diplomatic immunity in an

[1] Hyde on International Law, Vol. 1, pp. 722, 723.

American court would be very doubtful. It is true that the League is a sovereign power, but the Secretary-General is not a diplomatic representative of that power; nor are the representatives of the Members of the League necessarily diplomatic representatives of their respective countries. The seat of the League is established at Geneva, but representatives of the Members of the League are not accredited either to the Swiss Government or to the League as ministers or ambassadors. They are simply officials of their respective governments and of the League. Their diplomatic immunity rests entirely on the Treaty, and the Treaty has no effect on those nations which have not ratified it, or which have not become parties to it by becoming Members of the League. Hence, a representative from China, for example, travelling through the United States to attend a meeting of the Assembly at Geneva, could probably claim no diplomatic immunity in this country as a matter of right, any more than could an Australian prime minister travelling to attend an Imperial Conference in London.

The word "inviolable," as applied to buildings and other property occupied by the League, or its officials, or by representatives attending its meetings, is not defined. The apparent meaning is that such property shall have the immunity from local jurisdiction which is conferred on the dwelling house and goods of a diplomatic representative. It is not clear whether these provisions involve exemption from taxation or not. The personal exemption of representatives and officials from taxation may be reasonably included under the phrase, "diplomatic privileges and immunities." The exemption of property from taxation, however, rests on a different basis. Nevertheless it has sometimes been held that property of a foreign sovereign is exempt from taxation by reason of its ownership. (252 Southwestern Rep., 124.) Here again, the immunity claimed rests entirely on the Treaty. Were the League of Nations to purchase a building in Washington to be occupied by its agents for the purpose of securing information, or inducing the United States to join the League, that property would probably be held to be exempt from local jurisdiction as the property of

a foreign sovereign; but it is only as the property of a foreign sovereign that exemption from taxation could be claimed for such property.

II. In the Permanent Organization of Labour.

Curiously enough, Part XIII of the Treaty contains no provision for any diplomatic immunity for the Organization of Labour and its officials. It may have been assumed that the immunity conferred by Article 7 of the Covenant of the League extended to representatives of members of the Organization of Labour, and officials of that Organization. The Treaty, however, bears no such construction. The immunity conferred by Article 7 is conferred on only two classes of people: (a) representatives of the Members of the League; and, (b) officials of the League. Whether the words "when engaged on the business of the League" apply to both these classes, or only to the latter, is not clear, from the English text. The French text, however, literally translated, reads that the representatives of the Members of the League, and its agents, enjoy in the exercise of their functions, diplomatic privileges and immunities. It is only in the exercise, therefore, of their functions as representatives of Members of the League, or as officials of the League, that these persons can claim immunity. Hence, representatives of members of the Organization of Labour, and officials of that Organization, although its members are also Members of the League, cannot claim immunity under Article 7, because they are not engaged on the business of the League when they are engaged on the business of the Organization of Labour. The Organization of Labour, therefore, as an international organization, is regarded as of less consequence than the League of Nations, although in some respects it is a more powerful and a more permanent organization.

The French phrase "in the exercise of their functions" is clearer than the English phrase, "when engaged on the business of the League." The French phraseology appears to cover

the travel of representatives and officials to and from the seat of the League. The English phraseology is not so clear.

Whether the diplomatic immunity given to a League official includes immunity with reference to the nation of which he is a citizen is an interesting question.

CHAPTER XIII

MANDATORIES

THE provisions in regard to mandatories are contained in Article 22.

"To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

"The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

"The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

"Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

"Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

"There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

"In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

"The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

"A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

The legal effect of this provision is the assertion of sovereignty by the League over all peoples for which it assumes responsibility; that this sovereignty is held by the League in trust for the well-being of such peoples; and that the sovereignty over the peoples under tutelage should be exercised by

the advanced nations as Mandatories on behalf of the League. It follows, therefore, that the supreme, legislative, executive and judicial power in all such cases is vested in the League and that such power is delegated in each specific to the Mandatory.

The difference between the use of words by lawyers with a clear understanding of their significance, and the making of phrases for political purposes, is well illustrated by the language of Article 22. That Article lays down the principle with regard to peoples who are to be governed under mandates, "that the well-being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in this covenant." "A *sacred* trust" is a phrase with strong popular appeal which has no definite meaning to a lawyer. To a lawyer a trust is either valid or invalid. Classification of trusts into "sacred" and "non-sacred" trusts is unknown to any system of jurisprudence. Again, a "trust of civilisation" is a phrase with like popular appeal with no meaning to a lawyer. A "trust" to a lawyer involves, first, a *res,* or trust property; second, a trustee or person having control of the trust property; and, third, a beneficiary, or *cestui que trust* for whose benefit the trust property is to be managed by the trustee. Trusts of "civilisation," of "humanity," of "religion" and other abstract nouns, are unknown to the law. Disregarding these high-sounding phrases, therefore, the lawyer has to inquire first, with what kind of trusts does this article deal? Second, what is the trust property? Third, who is the trustee? Fourth, who are the beneficiaries of the trust? An analysis of the article shows, first, that the trust in question is of a public character; second, that the trust property, or *res,* is the power of governing the dependent peoples; third, that the trustee is the League of Nations; and, fourth, that the beneficiaries of the trust are the peoples governed under the mandates.

It must be noticed how carefully this article avoids a clear legal statement as to the legal meaning of the "sacred trust of civilisation." The article particularly avoids naming the League of Nations as trustee. Without a trustee, however, there can be no trust. Now, it is true that the French version

of the Covenant uses the phrase "A sacred mission of civilisation," which may, or may not, convey any legal meaning to a French lawyer. The English words "trust" however, and "securities" for the performance of this trust, do convey a perfectly definite meaning to every English-speaking lawyer throughout the world, and the article sets up a trust that is perfectly definite in its character. The trustee is obviously the League of Nations. The object of the trust is "the well-being and development of such peoples." The beneficiaries of the trust, while not particularly named, are yet defined with sufficient certainty under the general rules of law applicable to charitable trusts. The effect of a mandate is to confer upon the Mandatory certain of the trust powers vested in the League. It is not entirely clear whether the Mandatory is to be regarded technically as the agent of the League, or as a trustee succeeding to such powers as the League commits to the Mandatory by the mandate. It is true that the tutelage is to be exercised by the Mandatory "on behalf of the League." This language indicates a subordinate relation of the Mandatory to the League resembling the relation of an agent to his principals. The requirement of an annual report by the Mandatory to the Council also indicates this subordinate relation of the Mandatory to the League. On the other hand, Article 22 contains no express provision for the control of the Mandatories by the League. There is a permanent commission to receive and examine the annual reports of the Mandatories and advise the Council on all matters relating to the observations of the mandates. The actual power of control of the League, however, over any particular Mandatory must rest on the terms of the mandate itself in each case.

Two methods of issuing mandates are recognized by Article 22. First, by the members of the League acting separately but unanimously; second, by action of the Council. Whether the mandate is issued by the members of the League acting separately, or whether the mandate is issued by the Council, in either case a tutelage is exercised by the Mandatory *on behalf of the League,* and the mandate is the act of the League vesting the Mandatory with the power of government in a particular

case. Article 22 is, therefore, of the utmost importance. It involves, in the first place, an assumption of sovereignty by the League over the dependent peoples in question. This, in itself, is a clear recognition of the League as a sovereign power. It involves, in the second place, an admission by the mandatories that the sovereignty which they respectively exercise is not exercised by them on their own behalf, but on the behalf of the League as their overlord. The relation of the Mandatory to the League resembles that of the French noble with the right of high justice to the King of France in the Middle Ages.

> "That in Normandy the right of doing justice and receiving the profits thereof had become a heritable right is plain. The *honores* of the Norman nobles comprised rights of jurisdiction; the counts and viscounts were in name the successors of royal officials, of Frankish *comités* and *vicecomités* whose offices had become hereditary. The lands of the churches again were defended by ducal grants of 'immunity,' grants modelled on Frankish precedents. But the principles which regulated the existence and the competence of seignorial courts are very dark to us. Whether the right to hold a court can only be conferred by the sovereign's grant, or whether it arises from the mere relation between lord and men, or between lord and tenants, is a question to which we get no certain answer for a long time after the conquest of England, whether we ask it of England or of Normandy. In good times, however, the duke's justice was powerful throughout his duchy; it is as supreme judge hearing and deciding the causes of all his subjects, the guardian of the weak against the mighty, the stern punisher of all violence, that his courtly chroniclers love to paint him, and we may doubt whether in his own country the Conqueror had ever admitted that merely feudal arrangements could set limits to his jurisdiction." [1]

[1] Pollock & Maitland's History of English Law, Vol. I, pp. 49, 50.

It is impossible to read Article 22 without seeing that it creates the relation of lord and overlord between the Mandatory and the League of Nations. It is equally obvious that the framers of this article were careful to avoid a direct statement of this relation in such a manner as to shock the sensibilities of those persons who were unwilling to part with the smallest fraction of national sovereignty to the League. The legal impossibility of creating a League of Nations which should have no power over any action of its members could not escape the notice of all parties to the Treaty of Versailles, but even that small amount of sovereignty which it was necessary to vest in the League in order to make the League a reality was carefully disguised in the language of the Covenant. It is only by analysis of what results the Covenant actually produces as matter of law, that it is possible to determine the extent of the League's sovereignty; but such sovereignty over the dependent peoples referred to in Article 22 is clearly established by the provisions of that Article.

> "The Mandatory is a trustee of the League and its status is primarily defined by its obligations, as trustee, to the League and the mandated communities. That is the antithesis of sovereignty, and as between the League and the Mandatory it is the League rather than the Mandatory which has rights analogous to those of sovereignty." [2]

[2] Scope of the Mandates under the League of Nations, by Leonard Woolf, Esq. 29th Report of The International Law Association, p. 133.

CHAPTER XIV

CONSTITUTIONAL AMENDMENTS

I. In General

EVERY written constitution requires some provision for its amendment. The provision of the United States Constitution is as follows:

> "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." (Article V.)

II. Amendments of the Covenant of the League of Nations.

Article 26 is as follows:

> "Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the

Members of the League whose Representatives compose the Assembly.

"No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League." [1]

At its first session in November, 1920, the Assembly provided for a Committee on Amendments, which was appointed by the Council in March, 1921. It must be noted that Article 26 contains no provision for the proposal of amendments of the Covenant, but only for the ratification of such amendments, whereas in the United States Constitution, Congress, by a vote of two-thirds of both houses, may propose amendments which shall take effect when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. On the other hand, Article 26 does not forbid the proposal of amendments by the Assembly or by the Council. At its session in 1921, the Assembly unanimously agreed that for that session no amendments should be proposed except by a three-fourths majority of the Assembly including all the Members of the Council, and that for future sessions an amendment to this effect should be incorporated in Article 26 of the Covenant. The Assembly undertook to define the phrase, "the Members of the League whose representatives compose the Council" in Article 26, as meaning all those forming the Council when the vote was taken. The Assembly also provided that amendments are to be without effect if the required number of ratifications was not received within twenty-two months after the vote of the Assembly. Assuming that the Assembly has power to propose amendments, which seems to be taken for granted, the necessity of the ratification of such amendments within a reasonable time, and the power of the Assembly to fix a reasonable time for such ratification, is supported in principle by a decision of the United States Supreme Court.

In Dillon *v.* Gloss. 256 U. S. 368, the Supreme Court of the

[1] A full account of amendments, proposed and adopted, will be found in a valuable article by Professor Manley O. Hudson, 38 Harvard Law Review, 903.

United States, in construing Article V of the Constitution, holds that amendments submitted thereunder must be ratified within some reasonable time after their proposal; and that under this Article, Congress, in proposing an amendment, may fix a reasonable time for ratification, and that the period of seven years fixed by Congress in the Resolution proposing the Eighteenth Amendment was reasonable.

The Assembly also provided that any State dissenting from an amendment must notify its dissent within one year after the amendment becomes effective. This provision also seems entirely reasonable. As a matter of law, however, if an amendment should be proposed striking out the second paragraph of Article 26, it would be necessary for a dissenting member to notify its dissent prior to the ratification of the amendment by the other Members.

The Assembly also accepted certain drafting changes in Articles 12, 13 and 15 of the Covenant, to give equal prominence to judicial settlement with arbitrations, which became effective September 26, 1924.[2]

III. Amendments of the Constitution of the Organization of Labour.

Although the League of Nations and the Organization of Labour have identical membership, the provisions in regard to amendment of their constitutions are radically different. Article 422 of the Treaty is as follows:

> "Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members."

In comparing Article 26 with Article 422, it should be noted: 1. That Article 26 contains no provision for the proposal

[2] Hudson, 38 Harvard Law Rev., 931-933.

of amendments, whereas Article 422 provides for the adoption of amendments by the Conference by a majority of two-thirds of the votes cast by the delegates present.

2. That ratification under Article 26 must be by the Members of the League whose representatives compose the Council, and by a majority of the Members of the League whose representatives compose the Assembly, whereas Article 422 requires ratification by the States whose representatives compose the Council of the League of Nations, and by three-fourths of the Members.

3. Article 26 provides that no amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it ceases to be a member of the League, whereas, under Article 422, there is no provision for dissent, so that dissenting Members are absolutely bound by the amendment and have no right of secession.

The fact that constitutions of two bodies with identical membership are thus subject to such entirely different provisions as to amendments, offers a theoretical possibility of very great confusion. It may, perhaps, be assumed that by the withdrawal of membership from the League Nations, under Article 26, the Member withdrawing would, *ipso facto,* withdraw from the Organization of Labour, although nothing is said on that point in Part XIII of the Treaty. The right of withdrawal by dissent, however, is given to Members only in case that Part I of the Covenant of the League is amended, and it is obviously impossible to read that provision of Article 26 in regard to withdrawal, into Article 422. The difficulty with the framers of the Treaty seems to have been in their failure to distinguish between a mere co-operative enterprise, like the International Postal Union, and a super-government. Being afraid to set up one super-government with ordinary powers, like that of the United States, they set up two super-governments so rudimentary in their character that their fundamental legal nature is not clearly perceived. As the matter now stands, it is legally possible under Article 422 for the States composing the Council of the League of Nations and three-fourths of the Members of that League, to adopt an amendment to

Part XIII declaring that beer is a necessity for the health and happiness of the working-man, and must be allowed in all countries which are Members of the Organization. So, too, an amendment might be adopted that the right of free immigration from one country to another is essential to the welfare of the working-man, and that immigration laws should not be permitted to restrict that right. Both of these amendments are germane to Part XIII. It is true that Article 15 of the League Covenant may be claimed to exclude from the jurisdiction of the League matters which, by international law are solely within domestic jurisdiction, but Part XIII contains no such limitation as to matters within the domestic jurisdiction of Members. It is true also, that Part XIII does not at present undertake to regulate domestic legislation, but the broad proposition in the preamble that universal peace can be established only if it is based on "social justice," taken with the provision of Article 387 that the Permanent Organization is hereby established for the promotion of the objects set forth in the preamble, renders any amendment germane which expresses the opinion of the organization as to what is social justice in a particular case.

It is not a sufficient answer to the propositions above laid down to say that the theoretical possibility of amendment is of no practical consequence. The American Civil War offers sufficient evidence of the dangerous possibilities of controversies over constitutional questions, particularly where the question of the right of secession is involved.

Appendix

I. TREATY OF VERSAILLES

PART I

THE COVENANT OF THE LEAGUE OF NATIONS

The High Contracting Parties,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

Article 1.

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion, or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval, and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Article 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat,

Article 3.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may not have more than three Representatives.

Article 4.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Repre-

sentatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain, and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

Article 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Article 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League [in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union] *in the proportion decided by the Assembly.*[1]

Article 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Article 8.

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation

[1] The original text is in brackets. The italics show the change made by the Amendment which came into force Aug. 13, 1924.

and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval, and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

Article 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval, and air questions generally.

Article 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Article 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a

matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article 12.[2]

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration *or judicial settlement* or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision* or the report by the Council.

In any case under this Article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article 13.[3]

The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration *or judicial settlement* and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement.*

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international

[2] The words in italics were added by amendment, Sept. 26, 1924.
[3] The paragraph in brackets represents the original text. The paragraph in italics and the other words in italics represent an amendment effective September 26, 1924.

obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement.*

[For the consideration of any such dispute the court of arbitration to which the case is referred shall be the Court agreed on by the parties to the dispute or stipulated in any convention existing between them.]

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision,* the Council shall propose what steps should be taken to give effect thereto.

Article 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article 15.[4]

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect

[4] The words in italics were added by amendment Sept. 26, 1924.

such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the

request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nations and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number

by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Article 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States, not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an enquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purpose of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith

registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Article 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

Article 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Article 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

Article 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be

applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can

be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Article 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League.

In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Article 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Article 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world.

Article 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX.

I. Original Members of the League of Nations Signatories of the Treaty of Peace.

United States of America.
Belgium.
Bolivia.
Brazil.
British Empire.
Canada.
Australia.
South Africa.
New Zealand.
India.
China.
Cuba.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Roumania.
Serb-Croat-Slovene State.
Siam.
Czecho-Slovakia.
Uruguay.

States Invited to Accede to the Covenant.

Argentine Republic.
Chili.
Colombia.
Denmark.
Netherlands.
Norway.
Paraguay.
Persia.
Salvador.
Spain.
Sweden.
Switzerland.
Venezuela.

II. First Secretary-General of the League of Nations.

The Honourable Sir James Eric Drummond, K. C. M. G. C. B.

II. TREATY OF VERSAILLES.

PART XIII.

PERMANENT ORGANIZATION OF LABOUR.

Section I: Organisation of Labour.

WHEREAS the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following:

CHAPTER I: ORGANISATION.

Article 387.

A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original Members of this organisation, and hereafter membership of the League of Nations shall carry with it membership of the said organisation.

Article 388.

The permanent organisation shall consist of:

(1) a General Conference of Representatives of the Members and,

(2) an International Labour Office controlled by the Governing Body described in Article 393.

Article 389.

The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members.

Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

The members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article.

Article 390.

Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the present Article shall apply as if that Delegate had not been nominated.

Article 391.

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

Article 392.

The International Labour Office shall be established at the seat of the League of Nations as part of the organisation of the League.

Article 393.

The International Labour Office shall be under the control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions:

The Governing Body of the International Labour Office shall be constituted as follows:

Twelve persons representing the Governments;

Six persons elected by the Delegates to the Conference representing the employers;

Six persons elected by the Delegates to the Conference representing the workers.

Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

The period of office of the Members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

Article 394.

There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

Article 395.

The staff of the International Labour Office shall be appointed by the Director who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

Article 396.

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Part of the present Treaty in connection with international disputes.

It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference.

Article 397.

The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on the Governing Body of the International

Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

Article 398.

The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

Article 399.

Each of the Members will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

CHAPTER II: PROCEDURE.

Article 400.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article 389.

Article 401.

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

Article 402.

Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all Members of the Permanent Organisation.

Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

Article 403.

The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter.

Except as otherwise expressly provided in this Part of the present Treaty, all matters shall be decided by a single majority of the votes cast by the Delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

Article 404.

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

Article 405.

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (*a*) of a recommendation to be submitted to the

Members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the Members.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the members.

Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is

taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

The above Article shall be interpreted in accordance with the following principle:

In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

Article 406.

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

Article 407.

If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organisation to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

Article 408.

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken

to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

Article 409.

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

Article 410.

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

Article 411.

Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 409.

If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if,

when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

When any matter arising out of Articles 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

Article 412.

The Commission of Enquiry shall be constituted in accordance with the following provisions:

Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be

a person nominated to the panel by any Member directly concerned in the complaint.

Article 413.

The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 411, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 414.

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

Article 415.

The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

Article 416.

In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

Article 417.

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final.

Article 418.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

Article 419.

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

Article 420.

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of Interna-

tional Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

CHAPTER III: GENERAL.

Article 421.

The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing:

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

Article 422.

Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

Article 423.

Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention

concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice.

CHAPTER IV: TRANSITORY PROVISIONS.

Article 424.

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Article 425.

Until the League of Nations has been constituted all communications which under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League.

Article 426.

Pending the creation of a Permanent Court of International Justice disputes which in accordance with this Part of the present Treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

Section II: General Principles.

Article 427.

The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

They recognise that differences of climate, habits, and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit

the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

III: TREATY OF VERSAILLES.

PERMANENT COURT OF INTERNATIONAL JUSTICE.

Resolution Concerning the Establishment of a Permanent Court of International Justice.

Passed by the Assembly of the League of Nations, Geneva, December 13th, 1920.

1. The Assembly unanimously declares its approval of the draft Statute of the Permanent Court of International Justice —as amended by the Assembly—which was prepared by the Council under Article 14 of the Covenant and submitted to the Assembly for its approval.

2. In view of the special wording of Article 14, the Statute of the Court shall be submitted within the shortest possible time to the Members of the League of Nations for adoption in the form of a Protocol duly ratified and declaring their recognition of this Statute. It shall be the duty of the Council to submit the Statute to the Members.

3. As soon as this Protocol has been ratified by the majority of the Members of the League, the Statute of the Court shall come into force and the Court shall be called upon to sit in conformity with the said Statute in all disputes between the Members or States which have ratified, as well as between the other States, to which the Court is open under Article 35, paragraph 2, of the said Statute.

4. The said Protocol shall likewise remain open for signature by the States mentioned in the Annex to the Covenant.

Protocol of Signature of the Statute for the Permanent Court of International Justice.

Provided for by Article 14 of the Covenant of the League of Nations with the text of the Statute.

PROTOCOL OF SIGNATURE.

The Members of the League of Nations, through the undersigned, duly authorised, declare their acceptance of the adjoined Statute of the Permanent Court of International Justice, which was approved by a unanimous vote of the Assembly of the League on the 13th December, 1920, at Geneva.

Consequently, they hereby declare that they accept the jurisdiction of the Court in accordance with the terms and subject to the conditions of the above-mentioned Statute.

The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations.

The said Protocol shall remain open for signature by the Members of the League of Nations and by the States mentioned in the Annex to the Covenant of the League.

The Statute of the Court shall come into force as provided in the above-mentioned decision.

Executed at Geneva, in a single copy, the French and English texts of which shall both be authentic.

16th December, 1920.

OPTIONAL CLAUSE.

The undersigned, being duly authorised thereto, further declare, on behalf of their Government, that, from this date, they accept as compulsory "ipso facto" and without special

Convention, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, under the following conditions:

Statute for the Permanent Court of International Justice.

Provided for by Article 14 of the Covenant of the League of Nations.

Article 1.

A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organised by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

Chapter I: Organisation of the Court.

Article 2.

The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law.

Article 3.

The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

Article 4.

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

Article 5.

At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

Article 6.

Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Article 7.

The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

Article 8.

The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

Article 9.

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world.

Article 10.

Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

Article 11.

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12.

If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three

appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from amongst those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes amongst the judges, the eldest judge shall have a casting vote.

Article 13.

The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

Article 14.

Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

Article 15.

Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

Article 16.

The ordinary Members of the Court may not exercise any political or administrative function. This provision does not apply to the Deputy-Judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

Article 17.

No Member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No Member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a Member of a national or international Court, or of a commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

Article 18.

A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

Article 19.

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20.

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 21.

The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

Article 22.

The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

Article 23.

A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

Article 24.

If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the Presi-

dent disagree, the matter shall be settled by the decision of the Court.

Article 25.

The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

If however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

Article 26.

Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote and chosen with a view to ensuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body

of the Labour Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

Article 27.

Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each Member of the League of Nations.

Article 28.

The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

Article 29.

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

Article 30.

The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

Article 31.

Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles

2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

Article 32.

The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges, shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

Article 33.

The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II: COMPETENCE OF THE COURT.

Article 34.

Only States or Members of the League of Nations can be parties in cases before the Court.

Article 35.

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.

Article 36.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a Treaty;

(*b*) Any question of International Law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37.

When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

Article 38.

The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognised by civilised nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex æquo et bono,* if the parties agree thereto.

CHAPTER III: PROCEDURE.

Article 39.

The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorise a language other than French or English to be used.

Article 40.

Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

Article 41.

The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

Article 42.

The parties shall be represented by Agents.

They may have the assistance of Counsel or Advocates before the Court.

Article 43.

The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Article 44.

For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45.

The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

Article 46.

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47.

Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

Article 48.

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49.

The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

Article 50.

The Court may, at any time, entrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51.

During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52.

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53.

Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54.

When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

Article 55.

All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

Article 56.

The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

Article 57.

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

Article 58.

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Article 59.

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60.

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61.

An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the

party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

Article 62.

Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

Article 63.

Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceeding: but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64.

Unless otherwise decided by the Court, each party shall bear its own costs.

Resolution Concerning the Salaries of the Members of the Permanent Court of International Justice.

Passed by the Assembly of the League of Nations, Geneva, December 18th, 1920.

The Assembly of the League of Nations, in conformity with the provisions of Article 32 of the Statute, fixes the salaries and allowances of members of the Permanent Court of International Justice as follows:—

	Dutch florins.	
President:		
Annual salary	15,000	
Special allowance	45,000	
Total	60,000	
Vice-President:		
Annual salary	15,000	
Duty-allowance (200x150)	30,000	(maximum)
Total	45,000	
Ordinary Judges:		
Annual salary	15,000	
Duty-allowance (200x100)	20,000	(maximum)
Total	35,000	
Deputy-Judges:		
Duty-allowance (200x150)	30,000	(maximum)

Duty allowances are payable from the day of departure until the return of the beneficiary.

An additional allowance of 50 florins per day is assigned for each day of actual presence at The Hague to the Vice-President and to the ordinary and deputy-judges.

Allowances and salaries are free of all tax.